1952.

File No. S. Kanara 1/52

K

Examined

Legal **DEPARTMENT**
E **BRANCH**

Subject:— Suit Kanara

In the Court of the Civil Judge (S.D.), Kanara
Civil Suit no. 7 of 1952

K. Laxmanrao, proprietor, Shri Krishna Rice Mill, Siddapur — Plff

vs

The State of Bombay. — Defr

Re: For recovery of Rs. 12,500/- and costs of Suit

P.149
E

File No. S. Kanara 1/52

Std. Secrt. Slip 24-B

C O N T E N T S.

Legal Department File No. S. Kanara 1/52

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Kanara

C. S. No. 7 of 1951

K. Laxmanrao, proprietor, Shri Krishna Rice Mill, Siddapur

V/s

The State of Bombay

For recovery of Rs. 12,500 and costs of suit

From:-

The District Government Pleader, Kanara.

To

The Collector of Kanara.

Subject:- Civil suit No. 7-1951 filed by K.Laxmanrao against Bombay State.

No. 42 of 1952. Karwar, dated 2nd February 1952.

Sir,

With reference to your letter No.75 Sid. dated 22nd January 1952, I have the honour to send herewith the written statement duly drafted as called upon by the R.L.A. in his wire dated 22nd January copy of which was sent to you by me. The suit had been filed long ago and it has now been fixed on 25th instant for filing the written statement, after several adjournments. On receipt of your letter en-closing only 2 files I had to go to the Supply Office and search for all the relevant records which I collected from different files. I have drafted the written statement in colsultation with the Supply Branch and after going through all the relevant documents. I have referred to the relevant documents in the margin so as to facilitate easy reference to them. Therefore there is no necessity to prepare statement of the grounds of defence. One copy of the W.S. has been sent in advance to the R.L.A. I request you to forward the papers returned herewith to the R.L.A. so as to obtain the approval of the R.L.A. of the W.S. before 25th instant. This may be treated as urgent.

Yours faithfully,

D.G.P.Kanara.

(Copy forwarded for information to the R.L.A. along with a copy of the W.S. drafted in this case.)

D.G.P.Kanara.

L.D

Pl see overleaf letter from the D.P.P Kenya
In view of that receipt papers from Coll. may be awaited.

D.C
15/2

A. Cobb

For about a week

Subject

by
13/2

Coll has now forwarded * slip A his report under Rule 118 of the L.O.R together with the draft W.S. prepared by the D.P.P (slip A) It may approved immediately as the date fixed in it is 25-2-52 Brief may be prepared afterwards

SH/15/2

A Cobb This Brief may please be marked for Brig. The Member to whom it is marked will first examine the draft W.S. submitted by the D.P.P. & after it is approved it will be despatched so that it may be filed on the 25th inst. The Brief may then be prepared.

by
16.2.

S.O. (Jud.) Brief on revised is awaited
~~Please send papers back to me for preparation of~~

DR
20/2/52

3 4

In the Court of the Civil Judge,S.Dn.,Karwar.

Sp.O.S.No. 7-1951.

K.Laxmanrao ...Plaintiff.

Vs.

4 Copies

The State of Bombay. ...Defendant.

Written Statement put in by the Defendant:-

1. It is admitted that the plaintiff was the proprietor of Shri Krishna Mill at Siddapur.

Vide copy of notice dated 26-10-48 marked 'A'.

2. It is admitted that the Collector of Kanara had published tender notice inviting sealed tenders on 26-10-1948 so as to reach his office on or before 15-11-1948 for conversion of Govt. paddy into rice. Such tenders used to be called for a period of one year every year in October.

3. It was clearly mentioned in this tender notice that a contract would commence from 16-11-1948 and would be valid upto 15-11-1949 (both days inclusive) and the contractor, if his tender was accepted, was required to execute an agreement with the Collector and deposit a sum of Rs.1000/- as a guarantee for observance of the terms of the contract. The tenderer was also required to credit Rs.100/- as earnest money in any Government Treasury and send a challan along with the tender.

Vide documents marked 'B and C'.

4. Accordingly it transpires that the plaintiff credited Rs.100/- in the Sub Treasury at Siddapur on 13-11-1948 and sent his tender dated 14-11-1948 which reached the Collector on 16-11-1948(xxxx

Vide documents marked 'D and E'.

Vide document marked 'F'.

5. It appears that plaintiff's tender had not been accepted as it was received late. He had been informed accordingly on 8-12-1948. He then addressed his letters dated 11-12-1948 and 13-12-48 to the Collector of Kanara explaining the delay, and praying for acceptance of his tender. He was however informed that his tender could not be accepted.

s 13

Vide document marked 'G'.

He again repeated his request in his application dated 18-1-1949 submitted to the District Magistrate. In reply to this application the Collector informed him on 21-1-1949 that he will be supplied with Government paddy on receipt of Government orders provided he agreed to undertake the work at the percentages of outturn and rates of milling charges to be fixed by the Government. He was asked to contact ~~with~~ the mamlatdar of Siddapur for further details.

Vide document marked 'H' Pages 4 N. File II 423

6. As there was no other Mill at Siddapur fit to undertake milling of paddy the plaintiff was allowed to mill the Government paddy in terms and ~~xxx~~ conditions declared by the Government in the form of agreement prescribed that year for this purpose. The prescribed form had been circulated forthe information of all the contractors.

Vide document marked 'I'.

7. Every time the tender notices used to be issued in October, as milling work in majority of the talukas started from November. The tender notice and the agreement forms were common throughout the District. The tender notice always called for tenders for a period of one year only. The agreements also cover the period of one year ending with 15th November. The plaintiff has asserted in para 1 of his plaint that after the acceptance of the tender by plaintiff no separate agreement was entered into between the Govt and himself, and that milling was made on the conditions of the tender notice dated 26-10-1948. This is not correct. ~~After his tender was finally accepted~~ the plaintiff passed an agreement infavour of the Government on 25-8-1949. It was drawn up and signed by the Mamlatdar of Siddapur on behalf of the Government. In para 7 of this agreement,

7 45

however there was a mistake committed by the mamlatdar's office in mentioning the period of thi agreement. It was shown therein that the period was to commence from 1-4-1949 and to end on 30-3-50 This was clearly a mistake as the tender notice specifically mentioned the year end as 15-11-49.

Vide document marked 'J'. Hence this condition was not accepted by the Collector and it was not approved by him.

However the plaintiff knew well that his contract ended on 15-11-1949. Hence when tender notice was again issued on 10-10-1949 for the year 1949-50 inviting tenders for the year 1949-50 so as to

Vide document marked 'K' reach the Collector before 29-10-1949, The plff

Vide document marked 'L' submitted his tender for 1949-50 on 27-10-1949 along with a challan dated 28-10-1949 after

Vide document marked 'M' crediting Rs.100/- in the Sub Treasury at Siddapur.

Vide document marked 'N' He also addressed a separate letter dated 27-10-49. Thus it is clear that the plaintiff had treated his first year's contract as terminated on 15-11-1949.

8. His tender was not accepted for the year 1949-50 as the trouble had already started that he had resorted to corrupt practices and this matter was under enquiry. No separate reply is given if the tender is not accepted but a list of accepted tenders is prepared and circulated to all mamlatdars and mahalkaries to get agreements executed from the contractors whose tenders have been accepted. The plff's name does not appear in the list of such contractors shown in schedule 'B' in the Collector's Order dated 30th November 1949.

Vide document marked 'O'.

9. Similar tender notices were issued for the year 1950-51 and the plaintiff again submitted his tender on 27-9-1950 after crediting Rs.100/- to the Sub Treasury Siddapur on 26-9-1950.

Vide documents marked 'P and Q'

9 7

But this tender was not accepted and there was no fresh agreement between the plaintiff and the defendant. Thus it is clear that the plff's contract for milling of paddy was only for one year and had terminated on 15-11-1949 and this fact was within his knowledge. Hence plff's assertion that he was to continue for the years 1949-50 and 1950-51 is denied. Hence there is no basis for asserting any breach of contract or to claim damages for failure to supply paddy after October 1949. The milling season is generally only upto May end.

10. As the plaintiff had accepted this position that he was a contractor only for one year and submitted his tenders for the years 1949-50 and 1950-51 and these tenders had not been accepted, the plff is estopped from pleading that the first year's contract was to be continued also in the years 1949-50 and 1950-51.

11. The agreement passed by the plff was the real basis of the contract and it had to be read along with the tender notice. The security deposit had been reduced to Rs.500/- under clause 1 of this agreement. It was specifically agreed in this agreement that the Collector of Kanara may at his discretion forfeit the whole or part amount of deposit for contravention by the miller or his agent, servant or anyother person who can reasonably be presumed to have been acting on his behalf, of any of the conditions contained in the agreement and binding on the miller and that the Collector's decision in this respect should be final. There was no guarantee given by the Collector as to the quantity to be supplied to the plaintiff or that it would be supplied continuously. It was also agreed in condition No.4 of the agreement that Kani should not exceed 0.5 per cent

11 47

It was also agreed in clause 12 that the breach of any of the terms and conditions of the agreement by any employees of the Miller shall be deemed to be the breach of the terms and conditions of this agreement by the Miller himself and that it will not be open to the Miller to contend that he was not responsible for the act of his employees. It was further agreed that if any dispute arose over the meaning or interpretation of any of the terms and conditions of this agreement the orders of the Collector in that behalf should be final and conclusive and shall not be liable to be called in question in a court of law. The miller had agreed to abide by the orders of the Collector. The decision as to whether there was a breach of any of the conditions should lie with the Collector whose decision should be final. Hence even assuming that the period of contract entered into by the plff was beyond 15-11-1949, the decision of the Collector not to give him further supplies for milling was final.

12. There is misjoinder of causes of action in this Suit. The plaintiff cannot join together in the same suit, His claim for damages for alleged breach of contract along with his claim for compensation for alleged loss of reputation which is a claim in tort.

13. As the orders forfeiting the plff's deposit of Rs.500/- and blacklisting him were passed under statutory powers vested in the Government or the Collector this suit is not maintainable against the Government. The plaintiff cannot challenge these orders in this Court.

14. This court has no jurisdiction to weigh the discretion exercised by the Collector or to interfere with the exercise of statutory powers vested in the Govt or the Collector.

13 24

15. As x regards the claim for compensation for mental worry and loss of reputation this claim being based on tort the suit is not maintainable against the Government as the alleged tort is one based on the allegations made against the plff by the Collector of Kanara to the effect that plff had resorted to corrupt practices of mixing outside kani with the milled rice supplied to the Govt.

16. The above ascertion made against the plff was true and there was sufficient evidence to believe this allegation. The Collector and the Govt have acted in good faith and therefore there can be no claim for loss of reputation.

17. As regards the security deposit of Rs.5000/- there was a clear understanding that the Collector should have the right to forfeit the whole or part of the security deposit. Hence the decision of the Collector confirmed by the Govt cannot be challenged in a court of law by the plff.

18. Even if this Court has got jurisdiction to entertain the plff's claim it is denied that there was any intention on the part of the Collr to cause any mental worry or loss of reputation to the plaintiff. The order forfeiting the security deposit is not invalid or illegal as alleged by the plff.

19. This suit is barred by the provisions of section 9 C.P.C. as there was a clear understanding that the decision of the Collector as to the forfeiture of the deposit or termination of the contract at any time for breach of contract was to be final and the jurisdiction of the Civil Court had been clearly oustead by reason of the understanding which authorised x the Collector as the only the Tribunal to decide the question.

20. It is true that the plff had been served with a notice by the Collector of Kanara

15-23

to show cause on 15-3-1950 as to why the amount of deposit should not be forfeited and the Collector passed an order on 23-3-1951 forfeiting the deposit, ~~Vide page 158 notice served on the plff marked 'R', and the order marked 'S' at page 219 of File No.I.~~ After proper enquiry and after giving the plaintiff an opportunity to place his case before him, ~~the~~ The notice dated 15-3-1950 was issued for 3 different purposes. In addition to the question of ~~fxffxit~~ forfeiting ~~the~~ Rs.500/- ~~xxxxxx~~ the plff was called upon as to why he should not be permanently black-listed for the purpose of entrusting Govt paddy for milling, as he had resorted to corrupt practice of mixing kani with the government rice and also why he should not be prosecuted for breach of Bombay Food grains controll order 1947 and the Bombay Rice Mills Licensing Order 1943. After ~~xxxxxx~~ considering the plff's say on these 3 points the Collector dropped the idea of prosecuting the ~~xxfxx~~ plaintiff but he ordered that the amount of deposit of Rs.500/- should be forfeited to Govt. and that plff should be blacklisted for the purpose of entrusting the milling work of the Govt paddy.

Vide document mrked 'R'. and S'.

Vide page 158 notice served on the plff marked 'R' and the order marked 'S' at page 219 of File No.I.

21. The plff moved the Govt against this order of the Collector but the Govt refused to interfere. Having exhausted this remedy the plff cannot now prefer a claim in a Court of law.

Vide document copy of order at page 213 marked 'T'. in file No.I.

22. The plff had been supplied with all the certified copies applied for by ~~xxx~~ him of their evidence recorded ~~by him~~ in the enquiry and was given sufficient time to offer his ~~xx~~ explanation. The Collector passed the final order after considering all the evidence including the circumstantial evidence.

Vide page 171 marked 'U' and page 159 marked 'V' and pages 161 to 166 marked 'W' in file No.I.

23. It is a fact that the Collector was convinced that the plff had committed corrupt practice of mixing outside kani with Govt rice.

17 25

Such kani had been found in the rice bags either at one end of the bags (at the bottom) or on one side or just in the middle. Such kani was also of different colour and polish other than the rice milled. The R.D.C.S. & the members of public had complained against this kind of admixture of outside kani. The explanation offered by the plff that the kani had been found only in some bags milled on particular dates of his absence and that it was due to defect in machinery was found to be false. There was a detailed enquiry into the allegations and it was found that the plff used to mix outside kani in such rice. The plff then tried to explain the presence of the kani bags in his mill by saying that he had received such kani as remuneration for milling of paddy of private owners. In this connection it was found that he was not submitting statement of stocks, receipts, production etc., of such paddy as required by the Condition No.3 of the Licence issued under the Bombay Rice Mills Licensing Order 1943. The Collector was therefore perfectly justified in holding that the plff had resorted to corrupt practice of mixing kani outside kani.

24. As alleged in plaint para 3 it is true that the plff had submitted his explanation on 26-4-1950. The Collector passed his order pretty long time after this explanation was received on 23-3-1951. Copy of this order had been sent to the plff immediately but the plff's first notice was issued on 12-2-1951 prior to this order. Hence it did not refer to it. The receipt of this order has however been admitted in the second notice . Therefore plff's assertion in the last part of para 3 of the plaint is incorrect.

Vide page 171 marked 'U' in file No.I.

Vide document marked 'W' in file No.I.

25. In plaint para 4 the plff asserts that he did not get paddy for milling in October 49 In fact there was no sufficient stock of paddy required to be

19 27

M milled in October. Few bags that were left were got milled by the plff on 4th and 5th November 194 It is not true that plff represented to Govt near about October 1949 or thereafter that the supply of paddy had been suspended. It was in 1950 that he had made such a representation. Hence the allegations made in para 4 of the plaint are denie

Vide document milling register at page 61 in File marked No.IV.

26.The allegations made in para 5 are denied. The order passed by the Collector is not illegal or unauthorised. There was a sufficient evidence to justify such an order. It appears that the Go-Down Keeper was colluding with the plff in hushing up such corrupt practice for which departmental proceedings had to be taken against him. Therefore it is not correct to say that there could be no chance to mix kani with the milled ric The Go-Down Keeper could easily be outwitted by mixing the kani in his absence in the way it was found mixed.

27. There was no loss of reputation as alleged by the plff in para 5 of the plaint. The amount claimed is excessive.

28. The claim made in para 6 is not tenable. The amounts claimed are excessible.

29. Cause of action as shown in the plaint para 7 is wrong. There are diffence causes of action for the alleged breach of contract and for the alleged loss of reputation.

The plff is therefor ~~xx~~ not entitled to any relief.

Verification

Subject :- Civil Suit filed by Shri K. Laxman Rao Proprietor Shri Krishna Rice Mill Siddapur against the State of Bombay

No: 75/Sid
Office of the Collector of Kanara
Karwar, 9th February, 1952.

By Regd.

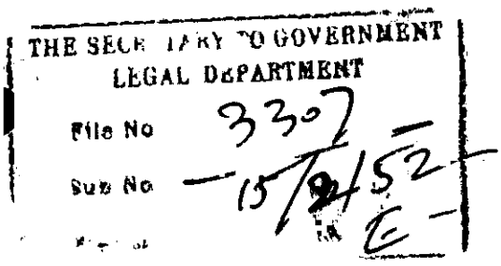
The Remembrancer of Legal Affairs,
Bombay.

Reference :- Your No. 762 dated 17th January, 1952.

In forwarding herewith the written statement (pages 3 to 19 in File No. 4) proposed to be put in by the District Government Pleader, Kanara I have to supply below the informations as required under rule 118 of the Law Officer's Rules.

Rule 118 . 1. (i) The number of the Suit is Special Civil Suit No. 7 of 1951 of the Civil Judge Senior Division, Karwar.

(ii) The Suit was filed on 11th July 1951 in the Court of the Civil Judge, Senior Division, Karwar.



(iii) K. Laxman Rao proprietor of Shri Krishna Rice Mill Siddapur is the plaintiff and the State of Bombay is the defendant.

(iv) The Suit is filed for Rs 12,500/-.

(v) It was fixed for the first hearing on 5-10-1951. But the Dist. Government Pleader had taken a postponement and so it has been postponed to 25th February, 1952.

(vi) A notice under Section 80 of the Civil Procedure Code has been given by the plaintiff and it was served on 24-2-1951.

2.(a) The Plaint is in the English language and therefore the question of enclosing a copy of the plaint in the regional language does not arise.

(b) A copy of the plaint typed in half margin, with necessary notes is -- enclosed.

(c)(i) A full and detailed statement of the circumstances which led to the suit is contained in this office report No. 75 dated 8th December,1950 (Vide page 191 of File No. I).

(ii) It is proposed by Government to defend the Suit (Please vide Govt. letter C.S.D.No.98/4133/II dated 5-7-1951 on page 243 of File No. I).

(iii) The grounds on which the Suit is to be defended are detailed in the written statement enclosed along with the letter No.42 dated 2-2-1952 by the District Government Pleader Kanara (please vide File No. IV pages 3 to 9

(d) The original copies of the documents relied on by the defendant are enclosed as mentioned by the District Govt. Pleader in his written statement dated 2-2-1952 (File No. IV) ~~pages 3 to 9~~ 2

(e) Enclosed in four files Nos. I, II, III and IV.

(f) As the documents are in English the question of furnishing a statement in English giving discription of the documents in the regional languages does not arise.

The case is ~~filed~~ fixed for hearing on 25th instant. Therefore it is requested that early sanction to defend the suit may kindly be accorded along with all the papers so as to reach this office before 25th instant.

9.2

for Collector of Kanara.

LR.

IN THE COURT OF THE CIVIL JUDGE,

SENIOR DIVISION, AT K A R W A R.

C. S. 31

Civil Auit No. of 1951

K. Laxman Rao, age 33 years, Mill Proprietor
Shri Krishna Rice Mill, Siddapur : .... Plaintiff.

versus.

The State of Bombay. .. .. .. Defendant.

Claim Rs. 12,500/-

Plaintiff submits as follows :-

1. Plaintiff is the proprietor of Shree Krishna Rice Mill at -- Siddapur for the last eight years. Plaintiff submitted a tender to -- Government for milling Government paddy accepting the terms of the tender notice dated 6-10-1948. -- Plaintiff's tender was accepted and he was given the Government paddy for milling on a deposit of Rs 500/-- Plaintiff accordingly milled Government paddy on the terms mentioned in the tender. After the acceptance of the tender by plaintiff, no separate agreement was entered into between the Government and the -- Plaintiff. So the milling was made as submitted above on the conditions of the tender notice dated 6-10-1948.

It is not a fact that the plaintiff's tender had been accepted. In fact, his tender was rejected as it had been received after the prescribed date i.e. after 15-11-48. His tender was received on 16-11-48 and he was informed on 8-12-48 that his tender was not accepted as it had been received late. But subsequently as there was no other mill at Siddapur fit to undertake the milling of paddy, the plaintiff was allowed to mill Government paddy on terms and conditions declared by the Government in the form of agreement prescribed that year for this --- purpose (Vide document marked 1) The plaintiff has asserted in para 1 of the plaint that after the acceptance of the tender by the plainfiff no separate agreement has been entered into between himself and Government and that milling was made on the condition of tender notice dated 26-10-1948. This argument is not correct. The plaintiff had executed an agreement in favour of the Government on 25-8-1949 (Vide

(5a
\

agreement at pages 57 & 35
File No. IV).

2. Plaintiff was served with a notice by the Collector of Kanara, Karwar, under date 15-3-1950 calling upon him to show cause as to why the amount of deposit of -- Rs 500/- made by him in respect of milling Government paddy should not be forfeited to Government for the breach of agreement committed by - him. The notice mentioned that plaintiff had committed the -- corrupt practice of mixing Kani (broken rice) from outside with Government rice. Plaintiff was -- called upon as to why he should -- not be prosecuted for breach of - Bombay Food Grains Controll Order 1947 and the Bombay Rice Mills Licensing Order 1943. The notice stated interalia that plaintiff had admitted in his statement on -- 11-11-1949 to the Prant Officer, Sirsi Division, Karwar, that he used to accept Kani from private persons as remuneration for milling their paddy. The notice also stated that plaintiff did not submit accounts of the paddy received by him from private persons which was said to have been proved by plaintiff's - own admission before the Prant --- Officer, Sirsi Division, Karwar. The notice further stated that plaintiff did not keep accounts of the paddy milled.

2)
83

3. Plaintiff showed cause to the Collector of Kanara, Karwar, on 25th April 1950 explaining all the charges levelled against him. -- Plaintiff submitted that the statement that he had accepted Kani as remuneration from private persons for milling their paddy was not - true. He also submitted that he had not committed any breach of - the Bombay Food Grains Control - Order 1947. The charge that he - did not submit accounts was also denied ; and mixing of outside -- Kany with Government rice was -- also denied. Plaintiff did not receive any communication from the Collector of Kanara, Karwar, after submission of the explanation.

4. Plaintiff did not ger -- Government paddy in 1949 October as usual. So he represented the matter to Government complaining against the action of the -- Collector of Kanara, Karwar, in suspending delivery of Government paddy to his mill. The Deputy Director of Civil Supplies, -- Bombay, confirmed the action of the Collector of Kanara, Karwar. The Deputy Director of Civil -- Supplies repeated the charge -- against the plaintiff in general terms stating that he was indulging in mal-practices. Plaintiff denies this charge totally.

In para 4 the plaintiff contends that he was not given paddy since October 1949. His contention that he should have been given paddy in and after October 1949 is untenable. Every year tender notice is issued in October as the milling year in this District starts in November. The tender notice always calls for tenders for one year only. The agreements also cover a period of one year only ending with 15th November. The Plaintiff had passed an agreement in favour of Government on 25-8-1949, drawn up and signed by the Mamlatdar, Siddapur on behalf of Government. In drawing up this agreement a mistake was committed by the Mamlatdar's Office

in mentioning the period of agreement as from 1-4-1949 to 30-3-1950. This is clearly a mistake as the tender notice specifically mentions the year as ending on 15-11-1949. Hence the period from 1-4-49 to 30-3-50 was not accepted by the Collector and it was not approved by him. However the plaintiff knew well that this contract ended on 15-11-1949. The fact that the plaintiff knew that his agreement expires on 15-11-1949 can be inferred from his conduct in as much as when tender notice was again issued on 10-10-1949 inviting tenders for the year 1949-50 the plaintiff submitted his tender for 1949-50 on 27-10-1949. Thus it is clear that the plaintiff had known his first year contract as having terminated on 15-11-1949.His tender for the year 1949-50 was not accepted as trouble had already -- started and there were allegations against him that he had resorted to corrupt practices by mixing kani in Government rice and this matter was under enquiry. No separate reply is given if the tender is not -- accepted.

5. The Collector has not supplied any paddy to Plaintiff's mill for -- the two years 1949-50 and 1950-51. Plaintiff submits that the charges levelled against him of corrupt and mal-practices are untrue and are not made in good faith. As submitted --

Similar tender notices were issued for the year 1950-51 and the Plaintiff again submitted his tender on 27-9-1950. This tender was not accepted and there was no fresh -- agreement between the plaintiff and the Government. Thus it is clear

above plaintiff has not admitted any of the charges in his statement before the Prant Officer, Sirsi Division, Karwar, and the orders passed on those basis not to give delivery of Government - paddy to plaintiff mill are unauthorised and hence illegal. -- Plaintiff has not contravened any provisions of the Bombay Food Grains Control Order ~~1949~~ 1947 and the Bombay Rice Mills Licensing Order 1943. Under the Bombay Food Grains -- gulation of movement and Sale Order, 1948, Agriculturists who get their paddy to plaintiff's mill for milling purposes had a right to give food grains for milling wages. Plaintiff had to accept Kani or - other foodgrains when those persons had no cash to pay milling charges. This acceptance of kani or other food-grain cannot by any stretch of imagination be presumed that Kani was mixed in Government rice, when Government paddy was milled under the direct supervision of Government Officers appointed in this -- connection. There is nothing in the tender notice prohibiting the plaintiff from milling private -- paddy and accepting kind or cash for milling wages. Under these circumstances, charges made against the plaintiff for not supplying Government paddy for milling are - that the plaintiff's contract was only for one year and that, that year had terminated as long back as 15-11-1949. Further the fact of this termination was well within his knowledge. The plaintiff's assertion that his tender was to continue for the year 1949-50 and 1950-51 is untenable.

Regarding the plaintiff's -- assertion that the charges levelled against him are untrue and are not made in good faith it is submitted that in this connection the report of the Collector No. 75 dated 8th December 1950 to the Assistant -- Director of Civil Supplies Bombay (Page /9/ of File No. I) giving all the facts and evidence in the case may be perused and Government in reply informed the Collector under Civil Supplies Department (Accounts) No. DA/483/7968 dated 31-1-1951 that as there was circumstantial evidence to prove his guilt the Security Deposit of Rs 500/- paid by the Miller should be forfeited and that he should be black-listed as a measure of punishment. The plaintiff states that he has not admitted any of the charges. But the charges are proved from the fact mentioned in this office report No. 75 dated 8th December, 1950. It was agreed in the agreement that if any dispute arose as to the terms and conditions

baseless. The Collector of Kanara and also the Government of Bombay are also guilty because of their orders, they have caused ~~caused~~ loss to the reputation of plaintiff and his mill. Plaintiff -- claims Rs 4,000/- as loss caused - to him by refusal of paddy for milling and Rs 8000/- for loss of reputation.

6. Plaintiff, therefore, called upon the defendant to pay Rs 12000/- for the loss of business and of -- reputation by notice dated 12th February 1951. Thereafter Plaintiff received an order No. DA/483/8330 dated 13/14th February 1951 to the effect that his deposit of Rs 500/- made according to the condition of the tender notice dated 6-10-1948 is also forfeited to Government. This order is illegal as the reasons and basis of that order are untrue. Plaintiff claims refund of this deposit of Rs 500/- also in all plaintiff claims against the defendant Rs 12500/-. Plaintiff gave -- second notice to Government dated - 23-4-1951 and demanded deposit -- of Rs 500/- and claimed Rs 4000/- as loss in business and Rs 8000/- as for

of the agreement, orders of the Collector on that behalf should be final and shall not be called in a Court of Law. Hence even assuming that the period of contract entered into by the plaintiff is beyond 15-11-1949, the decision of the Collector not to give him -- further supplies of paddy for -- milling is final. It is also to be noted that no guarantee was given by the Collector as to the quantity of paddy to be supplied to the plaintiff nor was any understanding given that it would be supplied continuously.

The plaintiff contends that the order of the Collector forfeiting the deposit of Rs 500/- is illegal. The Diredtor of Civil Supplies (Accounts), Bombay had ordered in his No. DA/483/7968 dated 31-1-1951 that the amount of Rs 500/- deposited by the miller should be forfeited as circumstantial evidence against the miller was sufficient to raise the presumption that the miller indulged in mixing up outside kani with rice. Further in the agreement executed by the plaintiff it has been specifically agreed that the Collector of Kanara may at his discretion forfeit the whole or part amount of the deposit for contravention by the miller of any of the conditions contained in agreement and that the Collector's decision in this respect shall be

35

loss of reputation. He has not received any replies. Hence this suit.

7. Cause of action for this suit arose within the jurisdiction of this Court in 1949-1950 & 1950-51. For refund of deposit of Rs 500/- cause of action arose on 13/14th February 1951.

8. This Court has jurisdiction to try this suit.

9. Claim for all purposes, court fee, jurisdiction is Rs 12500/-.

10. Plaintiff, therefore, claims from the defendant Rs 12000/- for loss of business and for loss of reputation caused by illegal -- orders of the Collector of Kanara and the Government of Bombay in - the two years 1949-50 and 1950-51 together with Rs 500/- the amount of deposit made according to the condition in the tender notice -- dated 6-10-1948 with all costs and such other relief as the Court may be pleased to grant in the -- circumstances of this case.

Valuation Rs .... Rs 12500/-.

Dated 11 July 1951.

I, K.Laxuman Rao, residing at Siddapur, do hereby declare that what is stated above is true to the best of my knowledge and belief.

Signed at Karwar this 11 day of July 1951

final. The miller cannot therefore challenge the Collector's order of forfeiture.

No. 2864 / 379 / 7

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 21st February 1952.
(Bombay No.1)

Subject:- Kanara Civil Suit No.7 of 1951.

MEMORANDUM.

The District Government Pleader, Kanara, is informed that the defence of the suit noted above is being sanctioned. In the meantime he is requested to file a written statement two typed copies of which are sent herewith.

o/c

For Remembrancer of Legal Affairs.

To
The District Government Pleader,
KANARA.

MRP.
21/2.

Sooner
21/2.

Let Cd for sign
21/2
A Sch
By Exp. Del. Today.

No. 91 dated 4th March 1952.

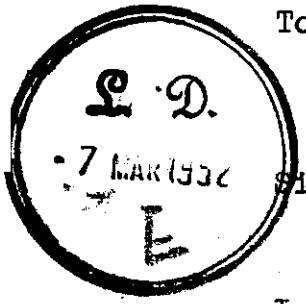
From:-

The District Government Pleader, Kanara.

39 L

To

The Remembrancer of Legal Affairs, Bombay.



Sir,

With reference to your letter No.2864 dated 21-2-52, I have the honour to inform you that Special suit No.7-51 has been fixed on 7th 1952. The written statement approved by you will be produced on that day. The suit has already become year-old. Hence it will be fixed for issues in this very month. Please therefore ~~x~~ return all the relevant documents which I had collected from the Collector Supply Branch at the time of drafting the W.S. and which must have been sent to you along with the draft W.S.

-4986
E/11.3.52

Yours faithfully,

Dist.Govt.Pl.Kanara.

Copy to:-

F.W.Cs. to the Collector of Kanara with a request that the relevant papers referred to above may be sent to me early if they are lying here in the Supply Branch.

D.G.P.Kanara.

Karwar Special Civil Suit No 7-1951 41

Shri. K. Laxmanrao , proprietor of the Shri Krishna Rice Mill Siddapur, District Kanara, has filed this suit against the State of Bombay for a decree for Rs 12500, and costs of the suit.

The plff was given a contract for milling Govt. paddy into Rice. Taking advantage of his position as a Govt contractor the plff began to indulge in malpractices . It was also proved that he had been mixing Kani (broken rice) with Govt Rice. The District Magistrate stopped sending any more paddy to him for milling and also called upon him to show cause why his deposit may not be forfeited. After hearing the plff the District Magistrate passed an order forfeiting the deposit of Rs 500 for irregularities in the execution of the contract

The plff alleges that he and his business had been defamed by the improper allegations of Malpractices made against him . He claims Rs 8000 for loss of reputation. He also claims Rs 4000 for the loss caused to him by the stoppage of further supplies of Govt paddy for milling . The plff also claims the return of the deposit of Rs 500

The suit is defensible and the defence of the same may be sanctioned on the lines of the accompanying brief.

(Solicitor)

Defence sanctioned accordingly

Received in C. S. D. Br. 1468
on 2/5/52

30-4-1952

×No.6919.S. 2-5-1952 Secy CSD

Read. Case pps. in 4 bundles and Copies of Chronological Statement.

L D. 3 MAY 1952

43 67

In the Court of the Civil Judge, S.Dn., Karwar.

Sp. O.S. No.7 of 1951.

K.Laxman-rao ... ---- --- Plaintiff.

vs.

The State of Bombay. ---- --- Defendant.

Written statement put in by the Defendant:-

1. It is admitted that the plaintiff was the proprietor of Shri Krishna Mill at Sidhapur.

2. It is admitted that the Collector of Kanara had published tender notice inviting sealed tenders on 26-10-1948 so as to reach his office on or before 15-11-1948 for conversion of Government paddy into rice. Such tenders used to be called for a period of one year every year in October.

3. It was clearly mentioned in this tender notice that the contract would commence from 16-11-1948 and would be valid upto 15-11-1949 (both days inclusive) and the contractor, if his tender was accepted, was required to execute an agreement with the Collector and deposit a sum of Rs.1000/- as a guarantee for observance of the terms of the contract. The tenderer was also required to credit Rs.100/- as earnest money in any Government Treasury and send a challan along with the tender.

4. Accordingly it transpires that the plaintiff credited Rs.100/- in the Sub Treasury at Siddapur on 13-11-1948 and sent his tender dated 14-11-1948 which reached the Collector on 16-11-1948.

5.. It appears that plaintiff's tender had not been accepted as it was received late. He had been informed accordingly on 8-12-1948. He then addressed his letters dated 11-12-1948 and 13-12-1948 to the Collector of Kanara explaining the delay and praying for acceptance of his tender. He was however informed that his tender could not be accepted. He again repeated his request in his application dated 18-1-1949 submitted to the District Magistrate. In reply to this application the Collector informed him on 21-1-1949 that he will be supplied with Government paddy on receipt of Government

orders ...

45 - 7.

orders provided he agreed to undertake the work at the percentages of outturn and rates of milling charges to be fixed by the Government. He was asked to contact the Mamlatdar of Siddapur for further details.

6. As there was no other Mill at Siddapur fit to undertake milling of paddy the plaintiff was allowed to mill the Government paddy on x terms and conditions declared by the Government in the form of the agreement prescribed that year for this purpose. The prescribed form had been circulated for the information of all the contractors.

7. Every time the tender notices used to be issued in October, as milling work in the majority of the talukas started from November. The tender notice and the agreement forms were common throughout the District. The tender notice always called for tenders for a period of one year only. The agreements also cover the period of one year ending with 15th November. The plaintiff has asserted in para 1 of his plaint that after the acceptance of the tender by plaintiff no separate agreement was entered into between the Government and himself, and that milling was made on the conditions of the tender notice dated 26-10-1948. This is not correct. The plaintiff passed an agreement in favour of the Government on 25-8-1949. It was drawn up and signed by the Mamlatdar of Siddapur on behalf of the Government. In para 7 of this agreement, however there was a mistake committed by the Mamlatdar's office in mentioning the period of this agreement. It was shown therein that the period was clearly a mistake as the tender notice specifically mentioned the year and as 15-11-49. Hence this condition was not accepted by the Collector and it was not approved by him. However the plaintiff knew well that his contract ended on 15-11-49. The wrong dates were mentioned in the agreement by mutual mistake. Hence that part of the x contract is void and not binding on either party. Hence when a tender notice was again issued on 10-10-1949 for the year

1949-50 ---

47

1949-50 inviting tenders for the year 1949-50 so as to reach the Collector before 29-10-1949, the plaintiff submitted his tender for 1949-50 on 27-10-1949 along with a challan dated 28-10-1949 after crediting Rs.100/- in Sub treasury at Siddapur. He also addressed a separate letter dated 27-10-49. Thus it is clear that the plaintiff had treated his first year's contract as terminated on 15-11-1949.

8. His tender was not accepted for the year 1949-50 as the trouble had already started that he had resorted to corrupt practices and this matter was under enquiry. No separate reply is given if the tender is not accepted but a list of accepted tenders is prepared and circulated to all Mamlatdars and Mahalkaries to get agreements executed from the contractors whose tenders have been accepted. The plaintiff's name does not appear in the list of such contractors shown in schedule 'B' in the Collector's order dated 30th November 1949.

9. Similar tender notices were issued for the year 1950-51, and the plaintiff again submitted his tender on 27-9-1950 after crediting Rs.100/- to the Sub treasury on 25-9-1950. But this tender was not accepted and there was no fresh agreement between the plaintiff and the defendant. Thus it is clear that the plaintiff's contract for milling of paddy was only for one year and had terminated on 15-11-1949 and this fact was within his knowledge. Hence plaintiff's assertion that he was to continue for the years 1949-50 and 1950-51 is denied. Hence this is no basis for asserting any breach of contract or to claim damages for failure to supply paddy after October 1949. The milling season generally is only upto May end.

10. As the plaintiff had accepted this position that he was a contractor only for one year and submitted his tenders for the years 1949-50 and 1950-51 and these tenders had not been accepted, the plaintiff is estopped from pleading that the first year's contract was to be continued also in the years 1949-50 and 1950-51.

11. The agreement passed by the plaintiff was the real basis of the contract and it had to be read along with the tender notice. The security deposit had been reduced to Rs.500/-

under ---

49 94

under clause 1 of this agreement. It was specifically agreed in this agreement that the Collector of Kanara may at his discretion forfeit the whole or part amount of deposit for contravention by the miller or his agent, servant or any other person who can reasonably be presumed to have been acting on his behalf, of any of the conditions contained in the agreement and binding on the miller and that the Collector's decision in this respect should be final. There was no guarantee given by the Collector as to the quantity to be supplied to the plaintiff or that it would be supplied continuously. It was also agreed in condition No.4 of the agreement that Kani should not exceed 0.5 per cent. It was also agreed in clause 12 that the breach of any of the terms and conditions of the agreement by any employees of the Miller shall be deemed to be the breach of the terms and conditions of this agreement by the Miller himself and that it will not be open to the Miller to contend that he was not responsible from the act of his employees. It was further agreed that if any dispute arose over the meaning or interpretation of any of the terms and conditions of this agreement the orders of the Collector in that behalf should be final and conclusive and shall not be liable to be called into question in a court of law. The miller had agreed to abide by the orders of the Collector. The decision as to whether there was a breach of any of the conditions should lie with the Collector whose decision should be final. Hence even assuming that the period of contract entered into by the plaintiff was beyond 15-11-1949, the decision of the Collector not to give him further supplies for milling was final.

12. There is misjoinder of causes of action in this suit. The plaintiff cannot join together in the same suit his claim for damages for alleged breach of contract along with his claim for compensation for alleged loss of reputation which is a claim in tort.

13. As the orders forfeiting the plaintiff's deposit of Rs.500/- and blacklisting him were passed under statutory powers vested in the Government or the Collector this suit is not maintainable against the Government. The plaintiff cannot

57 73

challenge these orders, in this Court.

14. This court has no jurisdiction to weigh the discretion exercised by the Collector or to interfere with the exercise of statutory powers vested in the Government or the Collector.

15. As regards the claim for compensation for mental worry and loss of reputation this claim being based on tort the suit is not maintainable against the Government as the alleged tort is one based on the allegations made against the plaintiff by the Collector of Kanara to the effect that plaintiff had resorted to corrupt practices of mixing outside kani with the milled rice supplied to the Government.

16. The above ascertaion made against the plff. was true and there was sufficient evidence to believe this allegation. The Collector and the Govt. have acted in good faith and therefore there can be no claim for loss of reputation.

17. As regards the security deposit of Rs.500/- there was a clear understanding that the Collector should have the right to forfeit the whole or part of the security deposit. Hence the decision of the Collector confirmed by the Govt. cannot be cahllenged in a court of law by the plff.

18. Even if this Court has got jurisdiction to entertain the plaintiff's claim it is denied that there was any intention on the part of the Collector to cause any mental worry or loss of reputation to the plaintiff. The order forfeiting the security deposit is not invalid or illegal as alleged by the plaintiff.

19. This suit is barred by the provisions of section 9 C.P.C. as there was a clear understanding that the decision of the Collector as to the forfeiture of the deposit or termination of the contract at any time for breach of contract was to be final and the jurisdiction of the Civil Court had been clearly ousted by reason of the understanding which authorised the Collector as the only Tribunal to decide the question.

20. It is true, that the plff. had been served with a notice by the Collector of Kanara to show cause on 15-3-1950

53 75

as to why the amount of deposit should not be forfeited and the Collector passed an order on 23-3-1951 forfeiting the deposit, vide page 155 notice served on the plff. marked 'R' and the order ~~makex~~ marked "S" at page 219 of File No.I. The notice dated 15-3-1950 was issued for 3 different purposes. In addition to the question of forfeiting Rs.500/- the plff. was called upon as to why he should not be permanently black-listed for the purpose of entrusting Govt. paddy for milling, as he had resorted to corrupt practice of mixing kani with the Government rice and also why he should not be prosecuted for breach of Bombay Food Grains Control Order, 1947 and the Bombay Rice Mills Licensing Order 1943. After considering the pllff's say on these 3 points, the Collector dropped the idea of prosecuting the plaintiff but he ordered that the amount of deposit of Rs. 500/- should be forfeited to Govt. and that plff. should be balcklisted ~~for~~ for the purpose of entrusting the milling work of the Govt. paddy.

21. The plff. moved the Govt. against this order of the Collector but the Govt. refused to interfere. Having exhausted this remedy the plaintiff cannot now prefer a claim in a court of law.

22. The p~~l~~ff. had been supplied with all the certified copies applied for by him of the evidence recorded in the enquiry and was given sufficient time to offer his explanation. The Collector passed the final order after considering all the evidence including the circumstantial evidence.

23. It is a fact that the Collector was convinced that the plaintiff had committed corrupt practice of mixing outside kani with Govt. rice. Such kani had been found in the rice bags either at one end of the bags (at the bottom) or on~~x~~ one side or just in the middle. Such kani was also of different colour and polist other than the rice milled. The R.D.C.S. and the members of public ~~x~~ had complained against this kind of admixture of outside kani. The explanation offered by the plff. that the kani had been found only in some bags milled on particular dates of his absence and that it was due to defect in machinery was found to be false. There was a detailed

55 77

enquiry into the allegations and it was found that the plff. used to mix outside kani in such rice. The plff. then tried to explain the presence of the kani bags in his mill by saying that he had received such kani as remuneration for milling of paddy of private owners. In this connection it was found that he was not submitting statements of stocks, receipts, production etc., of such paddy as required by the condition No.3 of the licence issued under the Bombay Rice Mills Licensing Order, 1943. The Collector was therefore perfectly justified in holding that the plff. had resorted to corrupt practice of mixing outside kani.

24. As alleged in plaint para 3 it is true that the plff. had submitted his explanation on 25-4-1950. The Collector passed his order pretty long time after this explanation was received on 23-3-1951, Copy of this order had been sent to the plff. immediately but the plff's first notice was issued on 12-2-1951 prior to this order. Hence it did not refer to it. The receipt of this order has however been admitted in the second notice. Therefore pplff's assertion in the last part of para 3 of the plaint is correct.

25. In plaint para.4 the plff. asserts that he did not get paddy for milling in October 1949. In fact there was no sufficient stock of paddy required to be milled in October. Few bags that were left were got milled by the plff. on 4th and 5th November 1949. It is not true that plff. represented to Govt. near about October 1949 or thereafter that the supply of paddy had been suspended. It was in 1950 that he had made such a representation. Hence the allegations made in para 4 of the plaint are denied.

26. The allegations made in para. 5 are denied. The order passed by the Collector is not illegal or unauthorised. There was a sufficient evidence to justify such an order. It appears that the Godown keeper was colluding with the plff. in hushing up such corrupt practice for which departmental proceedings had to be taken against him. Therefore it is not correct to say

that there could be no chance to mix kani with the milled rice. The godown-keeper could easily be outwitted by mixing the kani in his absence in the way it was found mixed.

28. The claim made in para. 6 is not tenable. The amounts are excessive.

29. Cause of action as shown in the plaint para.7 is wrong. There are different causes of action for the alleged breach of contract and for the alleged loss of reputation.

The plaintiff is therefore not entitled to any relief.

No. 7062 - L

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 5th May 1952

Subject:-

Karwar C.S. No. 7 of 1951

MEMORANDUM.

The District Government Pleader, Karwar, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which together with two copies of the written statement is sent herewith in advance.

Papers of the case in four files received from the Collector accompany.

.0/c

S K Kelkar

For Remembrancer of Legal Affairs.

To

The District Government Pleader.
Karwar

kam. 20.4.50.

Recn

G-1

No.98/2094/II,
Civil Supplies Department,
Bombay Castle, 29th May 1952.

To,

The Collecter of Kanara,
Karwar.

Kanara Cs. no: 7/57

Subject:- Request for refund of Rs.200/- to Shri Krishna Rice Mill, Siddapur.

Reference:- Your letter No.75 dated 23rd April 1952.

The Legal Department has informed this office that the defence of one suit filed by Shri A.Laxman Rao has been sanctioned and hence all papers received from you have been sent to the District Government Pleader, Karwar for taking necessary further action. You are therefore requested to contact the District Government Pleader, Karwar, further if required.

C K Patil

Asstt. Director of Civil Supplies (Distri
Bombay

Copy to the Legal Department.

SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No 10746
Sub No 31/57/52 E
Branch

30 MAY 1952
E

GJ 97

In the Court of the Civil Judge, Senior Division, at Karwar.

Special O.S.No. 7-1951.

K.Laxmanrao ..... Plaintiff.

Vs.

The State of Bombay ..... Defendant.

Submitted by plff as follows :- 7-6-1952.

The following facts and points are necessary to be got elucidated from the defendant before proceeding with the suit. Hence it is prayed that the defendant may be ordered to reply to the following interrogatories.

1. What specific terms and conditions of ~~xxgxxx~~ agreement have been contravened by the plaintiff as per the decision of the Collector as alleged by Defendant.
2. What are the occasions when defendant found plaintiff mixed outside Kani with Government rice, as alleged by defendant.
3. Is it not a fact that paddy was supplied to plff for conversion from February 1949 to 13th May 1949 and after a gap of one week again plaintiff was supplied with paddy till about July end of 1949.
4. Is it not a fact that on 13-5-1949 when the godcwnkeeper complained that there was some kani mixed in the rice the plff immediately gave in writing that if it was so he would get it separated at his own cost ?
5. What is the total quantity of Kani, wrongfully mixed, as alleged by defendant.
6. What is the loss incurred by Government on that account, if any ?
7. Are there any instances, when plff failed to deliver the rice or Kani to the extent of the per centage fixed. If so when and what was the deficit.

Sd.P.S.Kamat,

Pleader for the plff,

7-6-1952.

'True CopY '

D.G.P.Kanara.

"True Copy"

Sp.O.S.No.7-1951. 65 97

Ex.No.20.

Issues.

1. Does Plff prove that his contract with Deft is in terms of tender notice dated 6-10-1948 and nothing beyond the terms of the said tender notice ?

2. Is plff entitled to damages ?

3. Does Plff prove that the Deft-State of Bombay - is liable to him for the tort of defamation committed by Deft's officer ?

4. Does Plff further prove that under the contract pleaded under para 1 of the plaint the Deft was bound to supply paddy for k milling to Plff as alleged ?

5. Does Plff further prove that Deft was wrong in not supplying paddy to the Plff for 1949-50 and 1950-51 as alleged in plaint para 5 ?

6. Does Plff prove that there is thus the breach of the alleged suit contract by Deft ?

7. If so, what damages tha Plff suffered ?

8. Does Plff prove that he was wrongly and falsely charged about the corrupt practice and mala practices as alleged in plaint para 2 ?

9. Does Plff prove that these charges were made without good faith and and with malicious and deliberate intention to injure the reputation of Plff ?

10. Does Plff also prove that he has suffered damages by way of loss of reputation and loss of business and so to the extent of Rs.8000/- on this count ?

11. Is the Deft justified in making the alleged charges as a just and proper and natural sequence in view of the relations and dealings between the parties ?

12. Does Deft prove the alleged terms of agreement dated 28-8-1949 and that he was within his right to cancel the deposit for the reasons stated in para 2(1) of the said agreement ?

13. Is the Plff otherwise entitled to challenge the order of Deft's Collector to forfeit the deposit, if it is agreed to be final as per document dated 25-8-1949 ?

14. Is the Plff entitled to claim damages of Rs.4000/- on breach of contract and Rs.8000/- for loss of reputation and refund of Rs.500/-. ?

15. What decree and against whom ?

1-8-1952.

Sd.S.B.Vagyani,
Civil Judge, S.Dn.,Karwar.

SECRETARY TO GO
LEGAL DEPARTMENT
19687
File No. 20/8/52 E

L. D.
18 AUG 1952

No.389 of 1952.
Karwar, dated 14th August 1952.

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for information.

District Government Pleader,
Kanara,Karwar.

LD

Pl see overleaf copy of [illegible]
[illegible] in [illegible] of 1951 (Chairman)
They appear to be in order

AC
2/18

Sol (M) file

Suits :
Kanara.

For recovery of Rs. 12,500 and costs of suit.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 8671.

Bombay Castle, 23rd May 1952.

Letter from the Collector of Kanara No. 75/Sid, dated the 9th February 1952—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), KARWAR.
CIVIL SUIT No. 7 OF 1951.

K. Laxmanrao, proprietor, Shri Krishna Rice Mill, Siddapur ... Plaintiff;
versus
The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Karwar, No. 7062, dated the 5th May 1952—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

[*P.T.O.*

To

*The Civil Supplies Department,
*The Collector of Karwar,
*The District Government Pleader, Karwar (with two copies of the brief).

*With a copy of the brief.

No. of 1952.

Copy forwarded for information and guidance to

Submitted after issue
file in S. Kanara/S-2 (Gen)
29/8/52

Sec (contd) Rc
29/8

69 + 9

KARWAR SPECIAL CIVIL SUIT NO. 7 OF 1951.

Chronological Statement of Facts.

Shri K. Laxmanrao, Proprietor of the Shri Krishna Rice Mill, Siddapur, District Kanara, has filed this suit against the State of Bombay for a decree for Rs. 12,500 and costs of the suit.

On 6th October 1948 the District Magistrate of Karwar had issued a Notice inviting Tenders before 15th November 1948 for Milling Government Paddy on certain terms and conditions. The plaintiff did not put in his tender within the time allowed for it. He submitted his tender on 16th November 1948, that is too late by one day. The plaintiff's tender could not be therefore accepted. But the other tenders received in time were also not found to be acceptable. The plaintiff was therefore given the Milling Contract on certain terms and conditions. The plaintiff then executed an agreement on 25th August 1949 containing the terms of the contract. In this written agreement a mistake was committed in stating the period of the operation of the contract. Tenders had been invited for a contract for a period of one year only from 15th November 1948. That was also the intended period of operation of the contract when the agreement dated 25th August 1949 was signed by the parties. But in the written agreement the period was by mistake mentioned as from 1st April 1949 to 30th March 1950. The Collector pointed out the mistake to the Mamlatdar who had signed the agreement on behalf of the Government. The plaintiff's attention was also drawn to that mistake and he apparently agreed that it was a mere mistake. New tenders were invited for fresh contracts for one year from 15th November 1949. The plaintiff submitted his tender for that period on 27th October 1949. In the same way the plaintiff also submitted his tender for the next year on 27th September 1950. But the plaintiff's tender was not accepted for the years 1949-50, and for the year 1950-51. So the only contract entrusted to the plaintiff was for the year 1948-49, that is, from 15th November 1948 to 15th November 1949. During the operation of that contract it was found that the plaintiff had been indulging in many malpractices. There were grounds for holding that the plaintiff had been mixing Kani (broken rice) obtained from outside with Government rice. He used to accept Kani from private persons in payment of milling charges due to him. He failed to submit accounts of the paddy received by him from private persons for Milling. He also did not keep accounts of the paddy milled by him. The plaintiff had apparently done acts which amounted to offences under the Bombay Food Grains Control Order, 1947, and the Bombay Rice Mills Licensing Order, 1943.

On 15th March 1950 the District Magistrate of Karwar issued a Notice to the plaintiff calling upon him to show cause why his deposit of Rs. 500 under the Milling Contract given to him may not be forfeited for having committed a breach of the contract by mixing Kani obtained from other sources with Government rice. He was also asked to show cause why he may not be prosecuted for the illegal acts done by him. The plaintiff appeared and filed a written reply on 25th April 1950. He denied the charges. After considering all the circumstances and the evidence the Collector passed an order on 14th February 1951 that the plaintiff's deposit of Rs. 500 may be treated as forfeited for breach of the conditions of the Milling Contract.

The plaintiff alleges that the order forfeiting the deposit was illegal and improper as he had not committed any malpractices, nor had he committed a breach of any of the conditions of the Milling Contract. The plaintiff further complained that under the terms of the contract and the conditions of the tender Notice it was obligatory on the Defendant to send Government paddy to the plaintiff for milling for the next two years, that is, 1949-50 and 1950-51. But the District Magistrate stopped sending paddy to the plaintiff's Mill for milling from October 1949. The plaintiff also says that by making false charges against him the defendant had caused loss of reputation to him and his mill. The plaintiff claims Rs. 4,000 for loss caused to him by the stoppage of paddy from October 1949. He claims Rs. 8,000 for damages for loss to his reputation on account of the alleged false charges made against him. Lastly the plaintiff claims back the amount of the deposit of Rs. 500 alleging that there was no proper reason for forfeiting the same. The plaintiff's total claim therefore came to Rs. 12,500.

On 24th April 1951 the plaintiff gave Notice of suit under section 80, Civil Procedure Code. He filed the present suit on 11th July 1951 for the reliefs set out above.

Grounds of Defence.

In this suit a written statement was prepared and submitted by the District Government Pleader for approval. That written Statement was duly revised and the revised written statement has been filed in Court. The revised written statement is elaborately prepared and deals with every point raised in the plaint. A copy of the revised Statement is attached herewith. In view of the elaborate written statement already prepared it is not necessary to prepare a separate statement of the grounds of defence. All those grounds are contained in the written statement. The defence of the suit is sanctioned accordingly.

The attention of the District Government Pleader is however drawn to one more point. In paragraph 1 of the plaint the plaintiff alleges that after the acceptance of his tender no separate agreement was entered into by him. This is of course not correct. The plaintiff's tender was never accepted as it was received too late by one day. But the Milling Contract was eventually given to the plaintiff by separate negotiations and the terms of that contract are contained in the agreement dated the 25th August 1949. Unfortunately a mistake had crept in that document as to the period during which the contract was to be in operation. We have tried to urge in the written statement that by mutual mistake the period was wrongly stated as 1st April 1949 to 30th March 1950. The correct period was from 16th November 1948 to 15th November 1949. We have also tried to show that the plaintiff admitted that this was a pure mistake and he had submitted his tenders for new contracts for 1949-50 and 1950-51. If for any reason the court does not accept our contention as regards mutual mistake we may urge that the contract as it stands, was not binding on the Government. It is executed by the Mamlatdar on behalf of the Government. But the Mamlatdar had no authority to do so. Under section 175 (3) of the Government of India Act 1935, (which was then applicable) all contracts shall be expressed to be so made in the name of the Governor of the Province and

shall be executed or on behalf of the Governor by such persons and in such manner as he may direct or authorise. In the present case the contract seems to have been made in the name of the Governor. But it is signed by the Mamlatdar. A Mamlatdar was not a person duly authorised to execute such a contract under the orders then in force. There are many cases in which it is held that unless both the conditions are fulfilled a contract cannot be binding on the Government. See the Secretary of State *v.* Bhagwandas (40 Bom.L.R. 19).

It should be urged therefore that the contract as it stands is not binding on the Government, and the plaintiff had no right to urge that the Government had an obligation to send their paddy to the plaintiff's Mill at least till 30th March 1950. The plaintiff has alleged in paragraph 1 of the plaint that the contract was governed by the terms and conditions of the tender notice. Technically this cannot be correct. The plaintiff's tender was rejected and hence those terms and conditions had no force left. The plaintiff's contract was settled by new negotiations. However the Government would have hardly any objection if the plaintiff's contention that the contract was based on the terms and conditions contained in the Tender Notice is accepted by the Court. Those terms make it clear that the contract was to be for one year only as from the middle of November 1948.

The above points may be urged by way of alternative defences and the written statement may be amended accordingly, if necessary.

For these reasons it should be urged that the plaintiff's suit fails and that the same may be dismissed with costs.

1/52

113

From

23

The District Government Pleader,Kanara,
Karwar,

To

The Remembrancer of Legal Affairs,
Secretariat, Bombay.

LEGAL DEPARTMENT
17 APR 1953

Subject: Special Suit No. 7 of 1951.

No. 258 of 1953. Karwar: 15th April 1953.

Sir,

Special Suit No. 7 of 1951 filed against Government by K.Laxmanarao claiming Rs.12500/-,has been dismissed to-day by the Civil Judge, Senior Division,Karwar. Certified copies of decree and judgme have been applied for. They will be forwarded when received. The Court has awarded ¾th of the costs of the Government.

Yours faithfully,

District Government Pleader,
Kanara.

LP

Submitted

CS no. 7/51 is decided in favour of Govt. Result may be recorded after the receipt of copy of judgment. Till then file may be filed in S Kanara 1/52

Nhv
15/4
Sol(H) By
18/4

HE S... AY TO GOVERNMENT
DEPARTMENT
9587
18/4/53

6 Kan 1/52

175
15

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 395 of 1953. Karwar, dated 25th June 1953.

Sir,

Department,
tariat, Bombay.
27 JUN 1953

I have sent herewith certified copies of decree and judgment in Sp.O.S.No.7 of 1951. The copy of the decree will show that Rs.315/- have been awarded as legal fees on the suit claim. I have already submitted my Bill along with my letter No. 340 dated 1-6-1953 for this amount. The total costs of this suit including the pleader's fees mentioned in the decree come to Rs.607-2-0. After deducting the legal fees the total costs come to Rs.292-2-0. This Bill for the amount has been submitted under this Office letter No.306 dated 18-5-1953 and it has been forwarded by the Collector on 12th instant. The two Bills may kindly be sanctioned soon.

R. SECRETARIAT ... GOVERNMENT
... LEGAL DEPARTMENT
File No. 15699
Subject 27-6-53
Branch

Yours faithfully,
Dist. Govt. Pl. Kanara.

Fes

Submitted 53

As these bills pertain to passing of a bill of fees, 'C' branch may deal with them

Thu
29/6

Supdt NB 29.6.53

S.S.(C)

Sahib The DEO's bills book for fees and taxi charges for Rs 315/- and for Rs 29½-2-0 have been already released & have duly countersigned (Vide slips A & B in the Fees Advance 1953) C. Br. for Sahib. Therefore require these papers

Decree O.20
rule 6 & 7.

D E C R E E.

Exhibit No.121.

Appln No. 200/53
Wh. 85-0-
Sp. 2-8-0
Comp. 0 11-0
Paper. 0-1-0
3-4-0

In the Court of the Civil Judge, Senior Division. 27 12

At Karwar.

Special Suit No.7 of 1951.

K.Laxman Rao, age 33 years, Mill Proprietor
Shri Krishna Rice Mill, Siddapur. Plaintiff

Pleader Shri. P.S.Kamat.

versus.

The State of Bombay. Defendant.

District Government pleader
Shri.B.S.Mavinkurve.

Claim Rs.12,500-0-0.

Suit filed on 11th July 1951.

Suit registered on- 12th July 1951.

The Plaintiff submits as follows:

The Plaintiff owns Shri. Krishna Rice mill of Shiddapur. Government had called tenders for paddy milling and Plaintiff submitted a tender in terms of the tender notice dated 6th October 1948; that his tender was accepted and he was given paddy for milling on deposit of Rs.500/-; that after this no separate agreement was entered into between the parties and so the milling was made on the conditions of tender notice dated 6th October 1948; that on 15th March 1950 Plaintiff was served with the notice by the Collector of Kanara to show cause why his deposit of Rs. Rs.500/- should not be forfeited for the breach of the contract alleging currupt practice of mixing Kani (broken rice) from outside with Government rice and it also stated why the Plaintiff should not be prosecuted for the breach of Bombay food grains control order 1947 and the Bombay rice mill licensing order 1943 on mentioning that inter alia the Plaintiff had admitted in his statement on 11th November 1949 to the Prant Officer that the Plaintiff had accepted Kani from the private persons as remuneration for milling their paddy; that the Plaintiff has not submitted accounts of the paddy received in this way; that the Plaintiff

did not keep accounts of the paddy milled; that Plaintiff explained all these matters on 25th April 1950 submitting that he had not accepted Kani as remuneration from private persons; that he had not committed the breach 1947 Control order; that the charge of not submitting account also was not true and so also of mixing outside Kani is not true; that thereafter the Plaintiff did not get the Government paddy in 1949 October as usual; that so also for 1949-50 and 1950-51 Plaintiff's mill was not given any paddy by the Government for milling work; that the charges made by the Defendant against the Plaintiff are not made in good faith and therefore withholding the paddy from the Plaintiff's mill was illegal and unauthorised; that Plaintiff is not guilty of the Food grains Control order of 1947 or Mills Licensing order 1943 or regulations of movement and sale order 1948 as the agriculturists had the right to give food grains as charges for getting their paddy milled; that the Plaintiff had to accept the Kani from them when they had no cash to pay milling charges; that no such Kani was mixed with the Government rice; that the tender notice does not prohibit the plaintiff from doing milling work for private paddy; that in this way the Plaintiff lost business and suffered loss to the tune of Rs.4000/- and also suffered loss due to the loss of reputation to the extent of Rs.8000-0-0; that on 13th/14th February, 1951 the Collector of Kanara also sent order to forfeit the Plaintiff's deposit of Rs.500/-; that this order is illegal and improper; and hence the Plaintiff's suit for reliefs in question. The Plaintiff therefore, claims from the Defendant Rs.12000-0-0 for loss of business and for loss of reputation caused by the illegal orders of the Collector of Kanara and the Government of Bombay in the two years 1949-50 and 1950-51 to-gether with Rs.500/- the amount of deposit made according to the condition in the tender notice dated 6th October 1948 with all costs and such other relief as the Court may be pleased to grant in the circumstances of the case.

Valuation Rs.12500-0-0.

This suit coming on this day for final disposal before Shri. A.B.Vagyani, B.A.,LL.B., Civil Judge, Senior Division, Karwar in the presence of Shri. P.S.Kamat, pleader for the Plaintiff and Shri. B.S.Mavinkurve, pleader for the Defendant it is ordered and decreed as under.

The Plaintiff's suit is dismissed. The Plaintiff to pay Rs.450-3-0 four hundred and fifty and annas three only. 3/4th costs of this suit to the Defendant and bear his own.

Costs of the suit.

Plaintiff		Defendant.	
Stamp for plaint Ex.1-	859- 6-0	Stamp for power Ex.	
Stamps for power Ex.3-	0-10-0	Stamps for petition Exs.6,7,8,9,10,11,	6-14-0
Stamp for Exhibits 13,14, 21,22,25,97-	3-12-0	16,18,26,100,119-	
Pleader's fees,	630- 0-0	Pleader's fees.	315- 0-0
Subsistance for witnesses Exs.98,99	30- 0-0	Subsistance for witnesses Exs.31, 33,34,37,75,76,83, 96,113,122,123-	238- 6-0
Commissioner's fees		Service of process Exs.26,100-	46-14-0
Service of process Exs.1,27,97-	25- 0-0	Commissioner's fees	
Copying fees Exs.		Copying fees.	
Total Rs.	1548-12-0	Total Rs.	607- 2-0
Cost not allowed Exs.13,14,21,22,25,97-	3-12-0	Cost not allowed Exs.6,7,8,9,10,11, 16,18,26-100,119-	6-14-0
Balance Rs.	1545- 0-0	Balance Rs.	600- 4-0

Given under my hand and the seal of the Court, this 15th April 1953.

Examined. Found correct.

Sd.M.V.Raykar.
Decree Clerk.

Sd.A.B.Vagyani,
Civil Judge, Senior Division,
Karwar.
28th April 1953.

Pleader for the Plaintiff-

Pleader for the Defendant-

Copied by
Compared by
Original A.R.Gaonkar.
Copy

TRUE COPY.
9-6-53
Clerk of the Court.

Application received on- Fifteenth April 1953.

(Deposit amount received on 1-6-1953)

Copy ready on- - - Nineth June 1953.

Copy delivered on - - - Twenty-second June 1953.

C.O.C.

App-No 200-53
W&S-164,90.
Gp. 48-0-0
Emp. 12-0-0
Paper 0-12-0
60-12-0

Received on- 11th July 1951.
Registered on- 12th July 1951.
Decided on- 15th April 1953.
Duration- 1 year 9 months and 4 days.

In the Court of the Civil Judge, Senior Division, Karwar.

At Karwar. Exhibit no.120.

Special Civil Suit No.7 of 1951.

Pleaders.

Shri.P.S.Kamat.

K. Laxman Rao, age 33, years, Mill Proprietor-Shri Krishna Rice Mill, Siddapur. Plaintiff.

against

Government pleader.

The State of Bombay. Defendant.

Claim-Rs.12,500/-.

The Plaintiff sues to recover the suit sum as Rs.4000/- damages for the loss of business and Rs.8000/- as damages for defamation and Rs.500/- as refund of the deposit; alleging that Plaintiff owns Shri Krishna Rice Mill of Siddapur, that Government had called tenders for paddy milling and Plaintiff submitted a tender in terms of the tender notice dated 6th October 1948; that his tender was accepted and he was given paddy for milling on deposit of Rs.500/-; that after this no separate agreement was entered into between the parties and so the milling was made on the

o.p.2.

*conditions of tender notice dated 6th October 1948; that on 15th March 1950 Plaintiff was served with the notice by the Collector of Kanara to show cause why his deposit of Rs.500/- should not be forfeited for the breach of the contract alleging corrupt practice of mixing Kani (broken rice) from outside with Government rice and it also stated why the Plaintiff should not be prosecuted for the breach of Bombay Food Grains Control Order 1947 and the Bombay Rice Mill Licensing order 1943 on mentioning that inter alia the Plaintiff had admitted in his statement on 11th November 1949 to the Prant Officer that the Plaintiff had accepted Kani from the private persons as remuneration for milling their paddy; that the Plaintiff has not submitted accounts

of the paddy received in this way; that the Plaintiff did not keep accounts of the paddy milled; that the Plaintiff explained all these matters on 25th April 1950 submitting that he had not accepted Kani as remuneration from private persons; that he had not committed the breach of 1947 Control Order; that the charge of not submitting account also was not true and so also of mixing outside Kani is not true; that thereafter the Plaintiff did not get the Government paddy in 1949 October as usual; that so also for 1949-50 and 1950-51 Plaintiff's mill was not given any paddy by the Government for milling work; that the charges made by the Defendant against the Plaintiff are not made in good faith and therefore withholding the paddy from the Plaintiff's mill was illegal and unauthorised; that Plaintiff is not guilty of the Food Grains Control Order of 1947 or Mills Licensing order 1943 or regulations of movement and sale order 1948 as the agriculturists had the right to give food grains as charges for getting their paddy milled; that the Plaintiff had to accept the Kani from them when they had no cash to pay milling charges; that no such Kani was mixed with the Government rice; that the tender notice does not prohibit the Plaintiff from doing milling work for private paddy; that in this way the Plaintiff lost business and suffered loss to the tune of Rs.4000/- and also suffered loss due to the loss of reputation to the extent of Rs.8000/-; that on 13/14th February, 1951 the Collector of Kanara also sent order to forfeit the Plaintiff's deposit of Rs.500/-; that this order is illegal and improper; and hence the Plaintiff's suit for the reliefs in question.

*op.3.

2. The Defendant by exhibit no.12 contends that it is a fact that the tender notice was published by the Collector of Kanara to call sealed tenders on 26th October 1948 and to reach his office on or before 15th October 1948 for milling Government paddy; that such tenders were called every year in the month of October and for one year; that this tender notice stated that the contract would commence from 16th November 1948 and would be valid upto 15th November 1949 (both days inclusive)

125
83

and the contractor was required to execute an agreement with the Collector and deposit a sum of Rs.1000/- as guarantee against the due observance of the contract to follow the tender that Rs.100/- also was to be given as earnest money while sending tender by the contractor. On 13th November 1948 the Plaintiff had credited Rs.100/- by Chalan and sent his tender dated 14th November 1948 which reached the Collector on 16th November 1948; that on account of this delay the Plaintiff's tender was not accepted in that year; that Plaintiff made representations to explain and condone the delay and still his tender was not accepted; that however on a renewed application dated 18th January 1949 the Plaintiff was informed on 21st January 1949 that he would be supplied Government paddy on receipt of Government orders provided he agreed to work at the percentage of out-turn and the rate of milling charges to be fixed by Government; as there was no other mill at Siddapur for doing milling work the Plaintiff was given paddy for milling on terms and conditions declared by the Government in the form of agreement prescribed for that year; that it is not true that no separate agreement was entered with the Plaintiff as alleged by him in the plaint; that the Plaintiff has passed an agreement in favour of the Defendant on 25th August 1949; that in para 7 of this agreement the period from 1st April 1949 to 30th March 1950, however is stated through mistake as the tender notice mentioned the end as 15th November 1949; that the Plaintiff however knew well that his contract ended on 15th November 1949; that again for 1949-50 the * tender notice was issued on 10th October 1949; that the Plaintiff submitted his tender for that year also on 20th July 1949 and this also shows that Plaintiff treated his first contract as terminated on 15th November 1949; that his tender for 1949-50 was not accepted as the enquiry about the corrupt practice by the Plaintiff was going on; that similar tender notice for 1950-51 was issued and Plaintiff submitted his tender on 27th September 1950 and this tender also was not accepted; that thus the Plaintiff's contract for milling paddy was only for

*o.p.4.

one year and had terminated on 15th November 1949 and thus Plaintiff has no right to claim the right to mill paddy for 1949-50 and 1950-51 also and so the Plaintiff cannot claim any damages for want of supply of paddy even after 1949 October; that the Plaintiff cannot claim to continue the first year contract even for the years 1949-50, 1950-51; that the Plaintiff's agreement is the real basis of his contract; that the agreement gave the discretion to the Collector to forfeit the whole or part of the deposit for the contravention of the agreement by the miller, his agent or servant; that the Collector's decision in this respect was to be final; that no guarantee was given by the Collector as to the supply of paddy to the Plaintiff; that in condition no.4 of the agreement it was agreed that Kani should not exceed 0.5 per cent; that in case of dispute about the terms about the interpretation of the agreement the orders of the Collector for that purpose were to be final and conclusive and not liable to be challenged in Court of law as per the same agreement; that under these conditions the Plaintiff cannot claim paddy even beyond 15th April 1949 supposing the Plaintiff's agreement was upto that period; that the orders to forfeit the deposit and to black-list the Plaintiff's mill was passed under the statutory powers vested in the Collector and so the suit claim is not maintainable against the Government; that this Court has no jurisdiction to weigh the discretionary exercise of the Collector or to interfere with the statutory power of the Government and Collector; that the charges made against Plaintiff are true and they are based on sufficient evidence; that the action of the Collector and the Government are all done in good faith and Plaintiff can make no claim for damages for defamation; *that the order of the Collector to forfeit the deposit is also confirmed by the Government; that the Defendant never intended to cause any loss or mental worry to the Plaintiff; that the suit is barred by Section 9 of the Civil Prodedure Code as the orders to be passed by the Collector were to be final; that Plaintiff was served with a notice on 15th April 1950 as alleged and notice was issued for 3 different purposes like: to ask the Plaintiff to show cause about corrupt practice of mixing Kani with Government rice and why he should

*o.p.5.

85

not be prosecuted under Bombay Control Order of 1947 and the Bombay Rice Mills Licensing Order 1943; that Government refused to interfere with the Collector's order; that there was ample evidence to show the corrupt practice of mixing outside Kani with the Government rice; that such Kani was found either in one end or the side or in the middle of the bag; that the said Kani was different in colour and polish; that the R.D.C.S. and members of the public complained about this admixture of outside Kani; that the explanation offered by the Plaintiff for this as mistake or defect in the machinery was found to be untrue; that then again the Plaintiff tried to explain the presence of Kani with rice as the Kani which he would get as remuneration for milling private paddy; that in this way for his statements of accounts, about such Kani as required by the condition no.3 of the license issued to the Plaintiff as milling licence, he was not right; that it is not true that after 1949 October the Plaintiff did not get paddy for milling that really very little paddy stock was left for milling about that time and even so on 4th and 5th of November, 1949 Plaintiff was given some paddy; that Plaintiff is not entitled to relief either on facts or in law.

3. On these pleadings the following issues are framed at exhibit no.20:

Issues.

1. Does Plaintiff prove that his contract with Defendant is in terms of tender notice dated 6th October 1948 and nothing beyond the terms of the said tender notice ?

2. Is Plaintiff entitled to damages ?

*o.p.6.

*3. Does Plaintiff prove that the Defendant- State of Bombay- is liable to him for the tort of defamation committed by Defendant's officer ?

4. Does Plaintiff further prove that under the contract pleaded under para 1 of the plaint the Defendant was bound to supply paddy for milling to Plaintiff as alleged ?

5. Does Plaintiff further prove that Defendant was wrong in not supplying paddy to the Plaintiff for 1949-50 and 1950-51 as alleged in plaint para 5 ?

6. Does Plaintiff prove that there is thus the breach of the alleged suit contract by Defendant ?

7. If so, what damages the Plaintiff suffered ?

8. Does Plaintiff prove that he was wrongly and falsely charged about the corrupt practice and mal-practice as alleged in plaint para 2 ?

9. Does Plaintiff prove that these charges were made without good faith and with malicious and deliberate intention to injure the reputation of Plaintiff ?

10. Does Plaintiff also prove that he has suffered damages by way of loss of reputation and loss of business and so to the extent of Rs.8000/- on this count ?

11. Is the Defendant justified in making the alleged charges as a just and proper and natural sequence in view of the relations and dealings between the parties ?

12. Does Defendant prove the alleged terms of agreement dated 28th August 1949 and that he was within his right to cancell the deposit for the reasons stated in para 2(1) of the said agreement ?

13. Is the Plaintiff otherwise entitled to challenge the order of Defendant's Collector to forfeit the deposit, if it is agreed to be final as per document dated 25th August 1949 ?

14. Is the Plaintiff entitled to claim damages of Rs.4000/- on breach of contract and Rs.8000/- for loss of reputation and refund of Rs.500/- ?

15. What decree and against whom ?

4. Findings.

1. No and the contract is as per exhibit no.57 dated 25th August 1949.

2. This issue is supurflous and it can be considered along with issue no.7.

3. There is no defamation and the Defendant or his officer are protected under law.

4. No and at least for the contract year 1948-49 the Defendant was not bound to supply any fixed quantity.

5. No. Beside there is no contract for 1949-50 and 1950-51.

6. No.

7. Nil.

*o.p.7.

8. The charge of mixing outside Kani is not proved. But the fact proved or shown is that Kani got separately in the machine is mixed with the rice separately got and it is not shown that this exceeds 15/100 mixture as discussed below.

9. No and there was some ground to suspect like that as discussed below.

10. No on both the parts as discussed below.

11. Yes as discussed below.

12. Yes and yes as discussed below.

13. No.

14. No.

15. As per order.

87

Reasons.

5. The above stated summary of the pleadings of the parties make much of the facts of the case clear and I will only shortly detail them here. It is well-known that Government has from war time undertaken to control the conditions of growing and distributing and supply of Food Grains to the Public and so there have been good many orders and rules to carry out that system. Now the facts of the suit relate for the period 1948-49 to 1950-51 I may say. The Plaintiff owns a rice Mill at Siddapur known as Shri Krishna Rice Mill. There is also another mill at Siddapur known as Bharat Mill. For the suit period the Bharat Mill was on blacklist and so it was not given any paddy and so it did not do any milling work for the suit period, I may say. The existence of the second mill comes for reference in the suit as the Plaintiff has tried to make out a case that all the trouble for his mill arose on account of the interest taken by the said Bharat Mill to create this trouble. Then Plaintiff's mill was the only *working mill in the suit period at Siddapur and so the work of milling paddy should be given to the Plaintiff's mill. Now the relevant matters of this work are like this The Government calls tender from the various rice millers in all the District to do the paddy milling work for each year; that the year for this work is to be from 16th of November to 15th November of the next year including both days; that the tenders for the work of the milling paddy are called for those periods in the month of October and Government propose and publish certain conditions of this tender which are to be in the end the basis of the contract for the work of milling paddy for that year. The Plaintiff's case is that Government did publish a tender notice for the year 1948-49 on 6th October 1948 to call the various rice millers to send their tenders for receipt by the Collector on or before 15th November 1948 for the year 1948-49; that the Plaintiff did submit his tender in that year but it reached the Collector on 16th November 1948 that is, one day late and so the Plaintiff's tender was not accepted in the first place. The Plaintiff however says that after further

T.o.p.s.

representation he was given paddy for 1948-49 also on conditions to mill it as per tender notice dated 6th October 1948 and he did that work; that no separate agreement as such was drawn for such work in 1948-49 between the Plaintiff and Defendant; that Plaintiff was given paddy for milling upto 1949 October and he did not get any paddy in 1949 October as usual; that in the meanwhile some enquiry about charges against the Plaintiff was going on and so on 15th March 1950 a notice was served on the Plaintiff to show cause why the deposit of Rs.500/- made by the Plaintiff in connection with the contract of 1948-49 may not be forfeited for breach of agreement; that the notice alleged corrupt practice by the Plaintiff of mixing Kani from outside with Government rice; that the Plaintiff did not submit account of the paddy received by him as wages for milling the paddy of private persons; that Plaintiff gave explanations for all this position of charges; that as usual the Collector of Kanara published tender notice for the year 1949-50 and 1950-51 also and even in these years the Plaintiff's tenders were not accepted *and no paddy was given to the Plaintiff; that ultimately the Plaintiff's deposit also was forfeited and Plaintiff's mill was blacklisted; that thus the Plaintiff lost business for wrong orders and steps by the Defendant and its officers and so he claims the damage of Rs.4000/-; that he also claims damages of Rs.8000/- on account of loss of reputation on account of making false charges of mal-practice and consequent loss by putting the Plaintiff's mill in the blacklist and Plaintiff also claims Rs.500/- the sum of deposit forfeited. The Defendant on his part contends that for 1948-49 the Plaintiff's tender was not accepted as it was received late by one day; that even so he was given the work of milling paddy for that year on the orders of Government provided he agreed to work at the percentage of outturn and rate of milling charges to be fixed by Government; that for this year there is a specific agreement passed by the Plaintiff and this agreement covered the period of one year from 16th November 1948 to 15th November 1949 and it is not true that there is no specific agreement between the parties; that the agreement passed by the Plaintiff though mistake, mentions wrong

*o.p.9.

121
87

dates for the period; that tender notices for the year 1949-50 and 1950-51 also were issued and for the year 1949-50 the Plaintiff submitted his own tender against on 27th October 1949 and thus it is clear that the Plaintiff accepted the position, that his contract for 1948-49 did terminate on 15th November 1949 and there was no fresh contract with the Plaintiff for 1949-50 or 1950-51; that his tender for 1949-50 was not accepted as the enquiry about certain charges against Plaintiff was going on; that the Plaintiff's assertion that he was to continue to work for the year 1949-50 to 1950-51 is not correct in fact or in law that Plaintiffs contract was for one year only like 1948-49 and not 1949-50 and 1950-51. So the Plaintiff has no right to make a claim for any damage for 1949-50 and 1950-51; that as per the agreement of 1948-49 the Plaintiff was guilty of the breach of agreement by mixing outside Kani with Government paddy and also by contravening the per centage of Kani permitted in the rice

*o.p.10. *that the agreement provided that the Collector was to be the final authority to decide the position to show if there was breach any way by the Plaintiff and so the Plaintiff cannot challenge Collector's order to declare the breach of agreement and to forfeit deposit and also to blacklist the Plaintiff's mill. That in addition the Plaintiff was getting Kani as wages for the milling of private paddy and he did not keep account or declare stock of this private Kani and so he was guilty under the milling licence Order of 1943; that the Collector was right both on true facts and the conditions of the agreement in the various matters, to take all these steps against the Plaintiff; that there was never any guarantee either in the year of agreement like 1948-49 or in the years of no agreement like 1949-50 and 1950-51, that Plaintiff would be given any fixed amount of paddy for milling work and so Plaintiff cannot claim any loss for the deficit supply of paddy for his mill, that the charges framed by the Defendant were true and even otherwise under the terms of the agreement by the Plaintiff the Defendant was within his rights to take steps against the Plaintiff. These are in short, the facts of the case.

6. Now before turning to the discussion of the evidence I must say that the Plaintiff's plaint is not very precise or definite to allege only those facts as are connected with each of the 3 years in suit and to show what is his exact ground of grievance for a particular year. It would have been much better for the Plaintiff if the Plaintiff had arranged his facts in the pleading more relevantly or chronologically I may say, so as to show the effect of certain group of facts and then to display the Plaintiff's right which the Plaintiff would like to claim. The learned pleader for the Defendant has made much ground of this aspect of the plaint and he particularly relied for this on the order VI of the Civil Procedure Code to show what a pleading should contain. It is clear that the suit is with respect to the rights and liabilities arising under certain contracts or agreement and then under rule 4 of Order VI particularly when read in connection with other rules of that *order the plaint should have stated exactly, what his contract was, what its conditions were like period and other matters and how there is the breach of that contract. On account of this somewhat unhappy position of the plaint, it is not at once clear and easy to pick up that the Plaintiff's case is such a definite case on all the points concerned with the contract or the right to be alleged or claimed. Looking to the statement of the Plaintiff and the written statement of the Defendant it is clear that the period of the work of milling paddy for any year is to be from 16th of November of one year to the 15th of November of the following year and including both days; and it is also clear that the contract for this milling work is to be fixed after calling tenders on notice and these notices are generally published in the month of October of each year. Then the Plaintiff's case is that there was a tender notice published on 6th October 1948 calling tenders for the years 1948-49; that his tender was accepted and he was given the Government paddy for milling; that he did the work on the terms mentioned in the tender notice and there was no separate agreement entered between Plaintiff and Defendant, that is for 1948-49. I would like to discuss issue no.1 mostly with reference

*o.p. 11.

91

to year 1948-49 as issue no.5 is mostly concerned for the years 1949-50 and 1950-51. Then Plaintiff says that he got paddy till 1949 October and nothing thereafter. It is important to note that in a case based on contract the Plaintiff will have to stick up to the case made in the plaint and it will not be ordinarily justified to shift it to any other level or position unless the latter level or position is naturally and fully implied in the case made or expressed in the plaint. Then the Plaintiff's case is that there is no agreement drawn specifically and his tender is accepted for 1948-49 and he did the work in terms of the tender and the Defendant also accepted that work also in terms of that tender and so his contract for 1948-49 is in terms of the tender. Now I must say that this case of the Plaintiff cannot at all be supported on the evidence in the case. It may be *noted that plaint nowhere says that there was any written agreement between him and the Defendant. On the contrary it is definite to deny the existence of any such agreement. But at exhibit no.57 (which is at page no.13 of the file of all the relevant papers produced by the Government) there is an agreement by the Plaintiff and Plaintiff admits to have signed that agreement. So this very position will go to show that Plaintiff's contract is not in terms of the tender notice dated 6th October 1948 but it is to be more directly and precisely in terms of this exhibit no.57. The learned pleader for the Plaintiff tried to justify this veriation in the facts by saying that this agreement has been passed on 25th August 1949: that long before that and even for some time from 1948 November or December the Plaintiff was given paddy for milling and while such work is continued the agreement is taken. So the result is and the real fact also is that the agreement settled between the Plaintiff and the Defendant was in terms of exhibit no.57 orally or on understanding and only to have some document as record, exhibit no.57, was taken finally and so exhibit no.57 cannot be called the principal document of contract or it can be taken

*o.p.12.

as principal document of contract and in this way there is not much defect in his plaint. Well I must say that the Plaintiff will be hard-put to maintain such a position. It will be seen from the statement of the Plaintiff at exhibit no.45, as well as the written statement of the Defendant that both of them do not admit the exact period of the work for the contract of the Plaintiff in 1948-49 as both of them say that the period is wrongly put in the agreement. In the facts of the case I do not feel justified in accepting this agreed position of both the sides though they make it difficult for the Court to state such a position when they agreed that there is a mistake in exhibit no.57. I have already stated that the contract period of any year is to be from 16th November of one year to 15th November of other year and exhibit no.57 states the same period to be from 1st July 1949 to 30th October 1950. Besides there are facts to show that the Plaintiff's contract or the work for 1948-49 cannot be like the period proposed in the tender notices to be issued from year to year. With these preliminary remarks I will proceed to * discuss issue no.1 with reference to more direct facts. Exhibit no.46 in the file is the tender notice issued on 26th October 1948 and the plaint in the first place, wrongly states the same date as 6th October 1948. So here is the first mistake committed by the Plaintiff but of very minor importance. Plaintiff admits that his contract is in terms of this tender notice. Then it will be seen from exhibit no.48, that in pursuance of exhibit no.46, the Plaintiff submitted his tender dated 14th November 1948 which was received by the Collector on 16th November 1948, when it ought to have been in the hands of the Collector latest by the end of the date 15th November 1948 as the contract was to commence on 16th November 1948. It is true that exhibit no.46 does not state specifically that the tender must reach the Collector's office before 16th November 1948. But the position implied and understood by the parties is that the tender for 1948-49 must reach the Collector's office before the end of 15th November 1948. Exhibits nos.50 and 51 are two letters of the Plaintiff dated 11th December 1948 and 13th December 1948. And the Plaintiff admits in them that his tender for 1948-49 was cancelled or rejected, that is

*o.p.13

not accepted, that it reached the Collector's office beyond fixed time and so by one day late; that this delay may be excused and his tender may be reconsidered and he may be given work. Here I will state shortly the procedure followed by the Collector's office from the date of issue of tender notice to the date of final settlement of contract for milling paddy. It is like this: the tender notice is publfshed to call tenders from the rice Mill owners for the work on fixed certain minimum percentage of outturn of rice and certain rates also; that then a conference is held of all the Mills to submit tenders to the Collector and in the confe ce a discussion is further made to see who would give more outturn and lesser milling rate charges and that certain decisions would be taken on these matters and the millers to accept this decision, would be recommended to Government for sanctioning milling contract for that year and on the sanction of the Government only such *millers as are approved or accepted by the Government would be given that work. It will be seen from the letters, exhibit no.50 and 51 that Plaintiff was not present for such conference. So it is clear that Plaintiff's tender was not accepted in the first place and it is also clear that he has not been accepted as a miller fit to be given milling work for doing work on the final terms settled in the conference. Then it will be seen from exhibit no.53 that on 18th January 1949 he again moved the Collector, that is, the District Magistrate to consider his case on the ground that if the original tender given by all the millers were again re-discussed in the conference and different rates and conditions were allowed in the conference and then the opportunity was given to the millers to accept the finally settled agreement; his delay of 1 day for tender is of minor importance and so he may be given the work along with other millers on the rate fixed on the common agreement. To this a reply was given by exhibit no.54 on 21st January 1949 to say that the results of the millers' conference have been referred to the Government and orders from Government

*o.p.14.

are awaited and the Plaintiff will be given paddy after receipt of Government orders, provided the Plaintiff agrees to undertake the work at the percentage of outturn and rate of milling charges to be fixed by Government and then the Plaintiff states that for the first time he was given paddy on 11th February 1949 and so the Plaintiff's work began. Unfortunately we have not got the record before us in this suit as to what were those final orders by Government to accept the tenders of the millers who agreed to the tentative decisions of the conference and important matters which were the basis for recommendation to the Government for accepting the millers tenders. No record is put in respect of the millers whose contracts are accepted for 1948-49 and so what were the terms to prescribe the conditions. So in the case there is no evidence to show this decision and it will then follow that if in pursuance of exhibit no.54 the Plaintiff is given paddy milling work we do not know, under what conditions and terms it is given to the Plaintiff. I will come to that position later on. But at least from this discussion it is clear that the Plaintiff is not given *the work in terms of tender notice dated 26th October 1948 or his contract cannot be in terms of that tender only and nothing beyond the terms of the said tender and one will be and the Plaintiff also will be regretting to know that in the plaint he makes out his case that all his contract was in terms of tender notice dated 26th October 1948. In this way the Plaintiff's story prima facie falls to prove issue no.1. Then the learned pleader for the Plaintiff said that he would be correct to take such a view of the Plaintiff's case for issue no.1 and all the relevant record should be considered to know what is the contract between Plaintiff and Defendant no.1. According to rules of pleadings and the ruling to show that the party is not entitled to make out a new or different case not made in the plaint the Plaintiff's above argument may not have much force. But since there is already an agreement on record I do not think there is any objection to consider the Plaintiff's case on issue no.1 on little broader grounds. The above discussion shows that as the

*O.P.15.

tender notices were reconsidered to arrive at new positions in the conference of all the millers and so the Plaintiff was given the paddy milling work inspite of the some defective tendar and as the Plaintiff has done some work in 1948-49, it must be said that there is some agreement or understanding between the parties in 1948-49 for the said milling work. It may be noted that before suit the Defendant has nowhere specifically said that the period of milling contract for 1948-49 was from 16th November 1949 to 18th November 1950; that there has been so much enquiry and proceedings in respect of the Plaintiff's rice mill and even all the papers by this Plaintiff and enquiry, does not suggest before suit that the agreement gave a wrong date. Well I do not know what has led the Defendant to say that the agreement at exhibit no.57 puts a wrong date. Well if we know from the evidence that on certain understanding which was clear to both minds and before the actual agreement signed by the Plaintiff at exhibit no.57, -- Plaintiff was given some paddy for work and in the end -- written agreement is taken on 25th August 1949 *that is in the middle of the year according to the Defendant or in the -- middle of the year according to the agreement and if most of the terms of the agreement are according to the tender notice, exhibit no.46, it will be only proper to say that the agreement between the parties was like exhibit no.57 and nothing else. The Plaintiff nowhere states in exhibit no.45 anything about this agreement to say that that was not a binding contract in any real sense of the matter in dispute between the parties. Both sides find fault with only one thing in exhibit no.57 and that is, about the period, and I think this position of agreed mistake also cannot be accepted for the simple reason that the millers who were recommended to the Government as the millers fit to be given the paddy milling were according to the decision arrived at the conference as they were accepted by the Government and if Plaintiff was not given the work as he was not recommended in that conference and his tender also was defective for delay of one day the only inference is that

*o.p.16.

Plaintiff's case is treated as separate one and so the terms of contract with respect to the approved millers as arrived at in following all the basis settling their basis, cannot be the same for the Plaintiff. In short, the Plaintiff's contract was separate and particular one I may say. Besides the paddy milling work is to start from the 16th of November of the contract year and Plaintiff is not given paddy till as late as the February of the 2nd year of the contractual period like portions of two years and the other millers must have been given the paddy milling work in the 1st November of the contract year, the inference would follow that Plaintiff's contract started as the separate transaction and not as the result of usual and normal procedure followed for the contracts of other millers for that year. On account of these positions I think the period fixed in exhibit no.57 cannot be called any mistake and that is the correct period I may like to say. There are not many material mistakes that are discussed in this context and therefore considering all the facts relevant for issue no.1 I am inclined to hold that Plaintiff's contract whether impliedly settled before the actual date of exhibit no.57 * or finally settled and accepted by both the sides is not in terms of tender dated 26th October 1948 and it is only in terms of exhibit no.57 in all its words and expressions. In the light of this position I find on issue no.1 that Plaintiff fails to prove it and the contract between the Plaintiff and the Defendant for 1948-49 was exactly in terms of exhibit no.57.

*o.p.17.

7. Then next I will take issues nos.4 and 5 together. It is clear that the Plaintiff's contract is as per exhibit no.57 and not as per the terms of the tender notice dated 26th October 1948, that is exhibit no.46 though exhibit no.46 may be basis or as a proposal to lead to a contract. Then first we shall see what has happened for these 3 years like 1948-49 to 1950-51. It is clear from the plaint that Plaintiff was given some paddy in 1949 February and not before that and I must say that the plaint makes no grievance for non-supply of any paddy

before 1948 February. Well at the same time exhibit no.54 will show that Plaintiff will be entitled to get paddy only after exhibit no.54 dated 21st January 1949 and not before that. Then the Plaintiff also admits that paddy was been given to his mill from 1949 February and it was so given upto 1949 October. But herein also the statement of Plaintiff is not very correct. It may be stated as correct fact that from 13th May 1949 some trouble has arisen between the Plaintiff and the go-down-keeper and the Assistant-Go-down keeper of Siddapur and then the Mamlatdar of Siddapur about the correct outturn of the paddy as per agreement and from that further enquiry has started against the Plaintiff and the result of this enquiry and other matters to arise in the course of the enquiry are that Plaintiff is not given any paddy from 1949-50 to 1950-51 and his rice mill stood in blacklist, that is as disqualified to do any milling work for Government and his deposit of Rs.500/- also cancelled. But on account of this objectionable event of 13th May 1949 the Government had not stopped supplying the paddy to the Plaintiff and it stopped supply of paddy then only for a week or so from 13th May 1949 and again he was supplied paddy upto 7th July 1949 * and the Plaintiff further admits in exhibit no.45 that from 1949 June to September about 3000 bags of rice was brought from outside for supply in Siddapur Taluka. Well in cross-examination he further admits that while preparing the plaint he told his pleader to write about non-supply of paddy from 7th July 1949 to the end of the agreement, that is, to the date of 15th November 1949 but he did not state to put such matter while instructing for the notice, exhibit no.41; that he had also told his pleader that from July to October he did not get supply of paddy and somehow through mistake the word July has been dropped in the plaint. Then he says that his agreement was to end on 15th November 1949 and till that he must get paddy for milling and he further says that he did not instruct his pleader to write like that. So the Plaintiff would mean apparently that upto 1949 October the Plaintiff got some paddy

*o.p.18.

for milling and upto 13th May 1949 he was getting full measure of paddy for milling. But he wants now to say that he got nc paddy for milling from 1949 July to 1949 October. Then again in cross-examination he admits that he milled some Government paddy of 65 bags in 1949 November as test milling. The Plaintiff has produced the milling register which is at exhibit no.55 to show on what date how much paddy was given and how much rice or outturn he delivered back to the Government. This register will show that upto 15th June 1949 the paddy is given in usual and normal quantity and upto 7th July 1949 it is given in some stray quantity and last on 25th November 1949 he was given some 45 bags of paddy. Now according to the contract, exhibit no.57, the Plaintiff will be entitled to get paddy upto 1950 March. But the Plaintiff would like to base his claim for supply of paddy for 15th November 1948 to 15th November 1949. Now these facts will show that according to the either period the Plaintiff has not been given paddy for the full year and in full normal and measured quantity that could be spared for the Plaintiff's mill for milling purpose. It can be stated roughly that whatever paddy was given in 1948-49 to the Plaintiff would be nearly 8 to 9 thousand bags of paddy according to exhibit no.55 and Plaintiff's expectations were according to his own statement at exhibit no.45, that in a year about 10 to 12 thousand bags of paddy would be given * to his mill for milling. So this is the work got by the Plaintiff in 1948-49. Then it is clear that for 1949-50 and 1950-51 his tenders also were not accepted and no paddy at all was given to him. Now in these facts the question arises whether the Plaintiff is entitled to maintain that in any case he was entitled to claim the supply of paddy to him and if so he was entitled to supply of paddy of so many bags for milling work. Well I must say the Plaintiff has to stand on a very very weak and slippery right to claim any right against the Defendant on these points. The plaint itself nowhere states that even for the year 1948-49 when there was some contract that the Defendant had entered into any obligation as contractual obligation to supply paddy to the Plaintiff.

*o.p.19.

99 141

Much less the Plaintiff in a way says that his contract or right was such that Defendant was bound to give him paddy in any year if there is the contract or no contract. No doubt when a tender is called by the Defendant for doing certain work as per that tender and the said tender is accepted or some contract is entered into; under the auspicious or in pursuance of that tender, the Defendant, it can be presumed agreed to give some work to the Plaintiff. But this presumption does not mean that the Defendant agreed to give so much work and not more or not less. I am dealing these matters only on the contract or understanding and obligation on which the Plaintiff and the learned pleader for the Plaintiff wanted to plead for general rights arising in special conditions to regulate the use of the Plaintiff's mill by the Government along with the other rice mills then. For this general position the learned pleader for the Plaintiff relied on the ruling in A.I.R. 1915, Madras page 713 (Re.Krishna Swami Chettiyar) I do not think that this ruling supports any independent right of the Plaintiff to claim the supply of Government paddy for his mill as natural right. It is a criminal case arising for a certain breach of the mill licensing order and it was held that the said order was intra vires and that case does not at all lay down that if there are laws to curtail the *o.p.20. *original, natural or fundamental rights, those rights still subsist independent of those laws. So we have seen that the plaint does not say that there was any obligation on the Defendant to give so much paddy to Plaintiff for work. Then if we turn to the tender notice, exhibit no.46, it also nowhere states that so much paddy will be given to the Plaintiff or to any contractor for milling work. Nor it can be read to say that the Defendant by giving a tender unavoidably agreed to give any paddy for milling to any miller. Then if we turn to the agreement, exhibit no.57, also, there is nothing in it to show that the Defendant agreed to give so many bags of paddy for milling work to the Plaintiff and nothing more or nothing less. No doubt at least for the year of agreement,

that is, for 1948-49 as per exhibit no.57, it can be said that the Defendant did agree to give some milling work to the Plaintiff. But it must be noted that that would not mean that Defendant was bound to give any milling work to the Plaintiff as soon as exhibit no.57 is completed. Exhibit no.57 is mainly and fully intended to regulate all kinds of conduct of the Plaintiff and no kind of obligation on the part of the Defendant. So it must be said that the Plaintiff had no inherent or rather undeniable right to claim paddy from the Defendant for the milling work so far as the matter of contract goes. In this respect the Plaintiff's statement is worthnoting. He says that Government gave him no guarantee that so much paddy will be given to him per year or per month; that Government did not give any guarantee to say that they will keep his mill working for so many months. But as experience shows that he would be given 10 to 12 thousand bags for milling, and this period is from February to September and not the rainy season. So this position will show that there was no obligation on Government absolutely to give work to Plaintiff whether there is contract or no contract and at least in the year 1948-49 where there is some contract between the parties the Plaintiff has been given 8 to 9 thousand bags of paddy for milling work and that would be the amount of work expected by the Plaintiff for that year. Well if we see that for 1949/50 and 1950-51, there is no contract whatsoever with the Plaintiff; it then much more follows that Plaintiff has no right at all to claim any milling *work in these years from the Defendant. It is an admitted fact that for 1949-50 and 1950-51 the Plaintiff is not given any paddy at all, and the plaint also excepting para no.5, does not make out any case to show why in 1949-50 and 1950-51 the Plaintiff was entitled to paddy. So it must be said that Plaintiff practically makes out no case for these years to claim the paddy supply from the Defendant. It will be seen from the files that Plaintiff supplied his tenders and exhibit no.46 is for 1949-50 and exhibit no.72 is tender for 1950-51. But it is common ground that these tenders have not been accepted and he was not given any paddy work. So if there is a contract the

*o.p.21.

101 443

Defendant is not bound to supply the paddy to the Plaintiff at all, it much more follows that Defendant is not all bound to supply paddy for milling in the years 1949-50 and 1950-51; as there is no contract. The Plaintiff wants us to understand from plaint para no.5 the case that his contract for 1949-50 and 1950-51 was on the terms as existed in the year 1948-49. But it is clear that the Plaintiff supplied his tender for 1949-50 on 27th October 1950 and for 1950-51 a fresh tender also. The Plaintiff himself has treated the whole position like this: that the contract for 1948-49 has expired and there is to be new contract for 1949-50 and 1950-51. So it must be taken from the Plaintiff's own conduct that he cannot apply the terms of the contract for 1948-49 to any relation between Plaintiff and Defendant for the year 1949-50 and 1950-51. So the result is clear that the Plaintiff is not entitled to get any paddy for his milling work for 1949-50 and 1950-51 also. Now in this respect the learned pleader for the Plaintiff wanted to rely on certain remarks in page 370 of the Book of Law of Torts by S. Ramaswami Ayyer, (1950 Edition). He stated that Plaintiff as the owner of a rice mill has inherent and fundamental right to use his mill for the business of milling paddy that such right of his was controlled by the Government by certain regulations and if Government deprived or restricted the Plaintiff's right to do his business the Government had also equally a responsibility to give some business to the Plaintiff * and the Defendant was not right in keeping the Plaintiff out of business. Well this argument at the most apply for 1949-50 and 1950-51. Well for the year 1949-50 and 1950-51 it is not at all shown by the Plaintiff that his right of doing milling business was absolutely stopped by the Defendant as it is clear from the Plaintiff's own evidence that he was doing milling work for private paddy and he was getting wages for that private paddy milling work in forms of rice and Kani. The Plaintiff's mill has been put in the blacklist some time in 1951 March or so and the Plaintiff has not produced any evidence to show that in 1950-51 he was not able to do any milling work for private

*o.p.22.

paddy. Exhibit no.74 is his so-called account book for the work of milling of private paddy. It states of such work upto 13th March 1949 only and no afterwards. But from that alone it cannot be said that Plaintiff was absolutely deprived of doing any private milling work for 1949-50. So in the first place it is clear that Plaintiff had the liberty to do the work of private paddy milling and so it cannot be said that the Plaintiff's right for milling business was absolutely controlled by the Defendant. What was at the most done was as a public measure and in the interest of public in the days of controlled Food situation the Plaintiff was asked to have certain milling license and to do that business under the terms and conditions of that license and the Plaintiff might have lost that work only when the Plaintiff's milling license was cancelled. Then it will be seen from exhibit no.65 that the Collector has passed an order in respect of the Plaintiff on 23rd March 1951 that his deposit is forfeited and the Plaintiff is black-listed for the purpose of entrusting x milling of Government paddy. So it does not show that Plaintiff was stopped by the Collector for doing any private milling of paddy. The Plaintiff does refer to a law like Bombay Rice Mills Licensing Order of 1943. But he nowhere states that his license under that order also had been cancelled so that his mill is deprived from doing any private paddy milling work. So the position clear as to what the Plaintiff has been deprived of for the year 1949-50 and 1950-51 is the supply of Government paddy for his milling work and not the use of his mill for other work according to the laws and orders in force then. Naturally it * cannot be said that Plaintiff has been taken away his fundamental rights in any real sense of the term or absolutely. Now it must be said that the days of war and post-war periods were such that Government had to pass many laws and rules in the interest of public and to that extent the laws and rules to restrict the use of certain fundamental rights were quite legal and proper and as long as the learned pleader for the Plaintiff has not shown any order or any Government rule or order to be illegal to curtail the fundamental rights to do any business, I think the Plaintiff

*o.p.23.

is not entitled to make any grievance like that. Then to turn to class IV torts referred at page 358 of the Book of Ramaswami, the Government pleader relies that it does not apply to the Defendant. It states that ordinarily a person has a right to do any work for other. But there are two exceptions to this rule which are like a common carrier or hotel-keeper who are given licence to do such business and so they cannot refuse to serve the public. I do not know how this will apply to the Plaintiff to establish a right by the Plaintiff to claim supply of paddy from the Defendant for his mill. On the contrary it will apply more to the Plaintiff. So unless the Plaintiff is able to show that it is unlawful per se for the Defendant, to refuse the supply of Government paddy to the Plaintiff, the Plaintiff cannot make any grievance of non-supply of paddy by the Defendant. For these reasons I find on issue nos.4 and 5 against the Plaintiff and as recorded above.

8. Then now it follows that so far as the question of non-supply of paddy goes, the Defendant is not at all guilty of any breach of the contract with respect to the Plaintiff, and such position will exist on the basis that there is some contract for 1948-49 and there is no contract for the other two years and even for these two latter years there is no such right to the Plaintiff to claim supply of paddy. In the light of this position I find as above on issue no.6.

9. Then next I will turn to another aspect of the case and this aspect mostly arises on account of the notice dated 15th March 1950 given by the Defendant to the Plaintiff. The *Plaintiff says that while he was doing the milling the Defendant gave him this notice to ask him to show cause why his deposit of Rs.500/- in respect of the milling paddy contract should not be forfeited to Government on account of the breach of the agreement; that this breach of agreement was due to the Plaintiff's corrupt practice of mixing Kani rrom outside with Government rice; that even otherwise the Plaintiff failed to keep and give accounts of the private

*o.p.24.

Kani got for private paddy milling and so why he should not be prosecuted for such act for the breach of Bombay Food Grains Control Order 1947 and Bombay Rice Mills licensing Order 1943. Well, as remarked above the Plaintiff does not state in the plaint the facts in a very happy and serial order. But exhibit no.58 can be taken as the main ground to start the occasion for the Plaintiff to bring this suit and its contents will show that the charge against the Plaintiff was that he mixed purposely the outside Kani with Government rice; that Plaintiff did receive Kani from private persons as remuneration for milling their paddy and so this was against Food- Grains Control Order of 1947; that thirdly the Plaintiff has contravened clause 3 of Bombay Mills Licensing order 1943 by not submitting the accounts of the paddy received from private persons. So these are the 3 grounds on which the charge is made. Now first I will discuss the position as regards the fact of mixing outside Kani with the Government rice. It will be seen from the exhibit no.95 this witness for Defendant is a go-down keeper at Siddapur from 24th April 1949 to 9th June 1949 and he was also in charge of the work of milling got done from the Plaintiff's mill as he would deliver paddy to the Plaintiff for milling in the morning of the day and take the milled rice in the evening of the day. He then states that on 13th May 1949 he gave 91 bags of paddy for milling; that there were about 300 rice bags in the mill ready then; that in the evening of that day he did not take any delivery of milled rice as when he went to take delivery, he found Kani in the rice and he could see this when the Hamals tried to raise bags by the use of hooks, the Kani began to fall down and he then took up the idea to see the bags themselves and he then tested some bags by the *use of hollow-pointer (bumb) and he found Kani. Then the Plaintiff was not in the mill. Now it can be taken that the Plaintiff was not at the village upto the 12th May 1949 and at the most he has come to the village either on noon of 13th May 1949 and he was contacted by exhibit no.95 in the evening of 13th May 1949 and then about 10 to 15 bags of rice were put on the machine again that day to see the result and the Kani was got separated from those bags; so he

*o.p.25

105 #47

did not take delivery. But on 14th May 1949 he took delivery of some 57 bags on inspecting them. Then he states that on 13th May 1949 he got 102 Lbs. of Kani and this was found in 33 bags. Now later on I will come to the percentage of this Kani to the rice and so the consequent breach of the agreement later on. But now I will discuss only about the charge of mixing outside Kani with Government rice. It will be seen from exhibit no.56 that the witness, exhibit no.95, informed the Plaintiff by Yadi of 13th May 1949 that Kani was found in the rice bags of 13th May 1949 and that it was found at the bottom of the rice bags and the Plaintiff should explain why so much Kani was found. Then on the back of exhibit no.56 the Plaintiff gave reply to say that Kani was foumd in the rice as the sieve to separate the Kani was suddenly damaged and so to a certain extent the Kani was got mixed in the bag; that he has repaired that sieve and he has also cleaned the 10-15 bags of rice mixed with Kani and that he will also clear off the remaining bags at his own expenses and he is prepared to give any damages if there is anything wrong done by him. This is dated 14th May 1949. Then exhibit no.102 is the report by exhibit no.95 to the Mamlatdar about this affair and thus the enquiry has started about the so-called corrupt practice by the Plaintiff. Then ultimately a Panchanama was made of such matter on 17th May 1949 and it is at exhibit no.86. Now it will be seen that Plaintiff challenges the independent spirit of the Panchas but at the same time the Plaintiff is not able to dispute the correctness of this Panchanama at exhibit no.86, I may say. This Panchanama is made by Supply Head Karkoon with the aid of 4 Panchas and it states *that the Panchanama was made at 10 A.M. on 17th May 1949 and then 3 lots of rice bags were seen by the Panchas that in one lot of 35 bags only rice could be got out by taking the rice by Bumb, i.e. hollow-pointer; that in the second group there were 85 bags and in the third group there were 31 bags and these bags could give out Kani when tested by the Bumb; that this test also showed that

'o.p.26.

when 5 bags from the group of 85 were opened they contained Kani and in one of them both on the top and at one side there was all Kani and in another, both at the bottom and at one side the Kani was found; that this Kani was of whitish character on comparing to the rice; that then to find out the amount of Kani one bag was put on the mill machine but they could not assess any meaningful result as they had no idea of the machine itself. So it is clear that in two groups of bags the milled rice bags were found to contain Kani at the top, at the bottom and at the side and not in any other portion of those tested rice bags. Of course later on another Panchanama is made in the presence of Prant Officer but we may not be much concerned with that. So for the time being we shall take that some Kani, was found in the milled rice bags. Now the Plaintiff has given his explanation on 14th May 1949 to say that this Kani was due to the some damaged sieve in the mill machine and it happened in his absence and he will clear it at his own costs. So Plaintiff also admitted that there was some improper mixture of Kani apart from the question whether it was outside Kani or not. Then at exhibit no.82 dated 11th November 1949 the Plaintiff has given his own statement before the Prant Officer to make further enquiry about it, and therein the Plaintiff says that he has returned back Siddapur on the morning of 13th May 1949 and then on getting the complaint from exhibit no.95, he cleared some bags of rice and gave undertaking to clear other bags of rice; that this improper result happened on account of the damaged sieve as he learnt it from his driver and the driver also informed him that big Kani fell into the rice also without his knowledge, that is from the machine; that he has then also admitted this mixed position of rice and Kani that on 18th May 1949 he was asked to cleanse the other bags also and then he cleared *the bags on 19th May 1949 of the Kani. So it is clear that there was a mixture of Kani in the rice. Now if we refer to the statement of the Plaintiff in this respect, I think the Plaintiff's explanation of the position of mixed rice and Kani is not

*o.p.27.

107 149

very satisfactory. Unfortunately I personally have no knowledge of the exact machinary of the rice mill and the mode of the working of that machinary and I could not also see the actual machinary working. But whatever position can be gathered from the Plaintiff's statement in that respect it has not quite satisfactorily explained his position very fully. In exhibit no.45 he states that he found about 1 to 1½ Lbs. of broken rice i.e. Kani in each bag of rice at its bottom and such bags were 45, that is about the situation of 13th May 1949. Then he says that this result was due to the damaged 1st sieve that on account of the extra burden of work in May month his machinary had been overworked—this is not very correct position and even otherwise the Plaintiff is not within his right to make out any grievance of any weakness in his machinary—the machinary was in a position to go in disorder at any time that his driver fell ill; that on 13th May 1949 the cover of the elevator fell on the 1st sieve and the sieve was damaged; that there were two sieves at the place and through these two sieves the milled paddy or the rice passes, that the 1st sieve separates the broken rice and diverts it to another place where it is collected in a bag. So it would mean that the small broken rice is got separated at one place and is got separated at one bag. Then he further states that the 2nd sieve separates the broken rice of bigger size and diverts at another place and thus at the 2nd sieve the rice is got and broken rice is got another place and husk is thrown away before the milled matter comes to the sieve. So this statement of the Plaintiff will show that small broken rice as well as bigger broken rice and also what can be called a full rice and also husk are separately got from the maching when paddy is put in the machine for milling. Then he further states * that when the 1st sieve was damaged, his driver replaced the upper first sieve by the 2nd sieve that was in use already and at the place of 2nd sieve was put another sieve of holes bigger than those of the bigger 2nd sieve. In the first sieve there were 12 perforated holes over the length of 1 inch and for the 2nd sieve the same were 10 over an inch; that the 2nd sieve

*o.p.28.

which was put by the driver in the place of the 1st sieve had 8 holes over the same distance and no other sieve was available for use then. So this change of sieves according to him does not fully explain how the results can be as found and due to the mistake in the machinary. From this statement in examination-in-chief it would mean that on account of more holes in the first sieve a smaller broken rice could be got from the 1st sieve and on account of the lesser holes in the second sieve a little bigger broken rice could be got from the 2nd sieve. Then if the 2nd sieve of 10 holes is to be in the place of 1st sieve. But the Plaintiff means that the substituted first sieve was of 8 holes and thus it would mean much more bigger rice from the first sieve itself. Then in the cross-examination on this point Plaintiff states that the explanation he now gives is not prepared now only for the suit; that in every sieve Kani would fall separately and rice would fall separately and at no place would rice and Kani fall mixed at one time. Now if this is a fact it may not be easily understood why the Kani should be found mixed with the rice in the first place and also it should be so peculiarly found mixed like at one side of the bag, like at the bottom or at the top or at one side of it. So this position will only lead to think that the Plaintiff's explanation of the position of the mixed rice and Kani is not convincing. Then he further admits in the cross-examination that after the replacement of the sieve the separate rice and Kani continued to get; that on 13th May 1949 he did not mix both these kinds of broken rice together that is the smaller broken rice and bigger broken rice that the very bag to receive Kani was again used to receive rice after that Kani got in it with the result that there was no * purpose or the work of this sieve. So here the Plaintiff's explanation why rice and Kani could be mixed is practically meaningless. Then he has to admit that it would have done if the 2nd sieve was not used and a simple plate was used to pass the rice. Then he admits that till statement he had stated of damaged sieve only and he does not

*o.p.29.

remember if had stated of replacing of any sieve also. Then it will be seen from exhibit no.82 the statement made by the Plaintiff before the Prant Officer on 11th November 1949 that he did not say of replacing of the 2nd sieve in the place of the 1st sieve and the mixing of rice and broken rice from getting the 2nd sieve. Then in exhibit no.45 he states that his driver had told him that on account of replacement of the sieves the Kani had to go away along with the rice and that this happened without his knowledge and through mistake. But in exhibit no.83 a different statement is made. Then he states that before that statement he did not know how the Kani was got mixed as stated by him now in this Court. So it is clear that the Kani was got mixed in the rice only on account of the mistake in the mill, cannot be believed and further it cannot be believed from the very important position that it was found at the certain portions of the bag and not all over the contents of the bag. This position goes more to suggest that the mixture of Kani with the rice was more deliberate than any accidental or natural happening on account of the mistake in the mill. Well it can be said that another Panchanama had been made of some bags or another event was marked out by the Mamlatdar of Siddapur some time in November of 1949 or earlier. But it seems that on the visit of Mr. Darogar the Mamlatdar of Siddapur the Government Kani was found in about 3 bags of weight about 5 Maunds Bengali. It will be seen from exhibit no.93 the Police Patil of Siddapur and the Panch for the Panchanama dated 12th November 1949, exhibit no.90, that it was then found that about 52 bags of milled rice were examined and then two of the bags were poured out and so they could not find out what was the proportion of Kani and rice* in the poured bags as all got mixed together; that then they tested the other bags at 5 or 6 places by using Bumbs and then found that only 6 bags from 52 bags had Kani and then these bags were sought to be cleared by Mara i.e. 'Soop' and they found about $7\frac{2}{7}$ Lbs. of Kani in a quantity of $205\frac{5}{7}$ Lbs of rice. Then it can be also stated that some separate Kani was found in the Plaintiff's mill at 3 places like in some bags and some tims. So these facts will show that there was improper

*o.p.30.

mixture of Kani or broken rice in the milled rice and it cannot be said that Plaintiff's explanation is correct. Now next I will see whether this mixture of Kani was of outside Kani and for that I must say that Defendant's evidence is not all reliable, and it seems that somehow they go on imagining things as to what might have happened. It will be seen that before 13th May 1949 there has been no fault on the part of the Plaintiff or no part of complaint on the part of the Defendant about the Plaintiff's work and it must be taken that about upto 14th May 1949 the Plaintiff's work was faultless. Then we have seen that the Panchanama dated 17th May 1949 shows that the Kani mixed was certain whitish than the rice found there in the same bag and only from this change in colour and difference in colour I think it is sought to be said that Plaintiff mixed outside Kani in the rice. But this would not be a very correct position if I may say so. Exhibit no.95 is a person who is to deal with all this rice milling work of the Plaintiff for some period at least and this witness may not be stating all things very correctly. He says that cleansing work was not done in his presence and he does not know what way the cleansing work is done. But he asked the Plaintiff to cleanse the rice on 13th May 1949 or 14th May 1949 and then he did not immediately say that it was outside Kani mixed in the rice. Then it seems that the Plaintiff's separated brother has got a rice Mill at Sagar and the Plaintiff had just returned on 13th May 1949 from Sagar, it was sought to be suggested that the Kani found on 13th May 1949 must have been got from Sagar and that is the only ground I may say to suggest that it is outside Kani. The Plaintiff denies this fact. Then exhibit no.89 is the witness like Heroor Go-down-keeper and who lives from 25 to 24 miles from Siddapur. He had also complained about the * mixture of Kani to the Mamlatdar. I will come to this position later on. Now He says that the Siddapur rice is bit small and reddish in colour, that the same is the colour of Sirsi rice; that the Mundgod rice is a bit bigger and the complaint he gave

*o.p.31.

on 14th May 1949 about the mixture of Kani in the rice supplied to his go-down was from all the rice of Siddapur locality. Now it is clear that Siddapur is a deficit paddy area and it is just possible that the Heroor go-down might be supplied rice from any mill and he cannot say that if the rice supplied to his go-down was from Siddapur mill only. He does not know the kinds of paddy grown in Siddapur area; that Siddapur paddy may give out white rice and he does not know if the paddy like Mundgod paddy to give white rice is not grown in Siddapur. The complaint of this witness is at exhibit no.87 and he does not say in his complaint whether the Kani found was whitish or reddish and different from colour of rice. Then exhibit no.94 is a member of the Supply Advisory Committee for the Collector and from Siddapur and he says that the inner colour of the rice may be whiter than its outside colour and he cannot say if the outer is whitish, yellow or reddish or such thing and he means that it is brighter when he says it is whiter inside. This witness was present for the Panchanama dated 17th May 1949. So the statement of this witness and the Panchanama dated 17th May 1949 would not go to show that the Kani found on that day was any outside Kani. Then at exhibit no.104 the Defendant has examined the District Supply Officer himself and I must say that the Defendant has not been able to improve his case any way by examining this witness. He mostly speaks from the record as it is and he has no personal knowledge of any of the relevant facts except the things happened at the District Head quarters. But he admits that outside paddy is to be supplied to Siddapur Taluka and so that will mean that in the Siddapur go-down there might be the rice from paddy of other Talukas and so the Heroor go-down may get the milled rice which is not from the Plaintiff's mill, and this witness then states that *the outside Kani mentioned in exhibit no.58 is meant the Kani not got from the Government paddy. So this would show that it cannot be what is called Kani is got from Sagar as is sometime suggested for the Defendant to challenge the objectionable mixture of Kani with rice. Then this witness also admits

*o.p.32.

that no Panchanama was made to show that the suspected Kani could not be the Kani got from Government paddy. So except mere suspection that the Kani found on 13th May 1949 or rather on 17th May 1949 was outside Kani, there is no evidence to show that it was really outside Kani. Then it is suggested that Plaintiff gets both rice and Kani as wages for the work of milling private paddy and some such Kani or rice was found in the Plaintiff's mill as can be found in Plaintiff's statement at exhibit no.45. The Plaintiff accepts the variance of these things and then an occasion is taken by the Defendant to show that perhaps the Kani mixed on 17th May 1949 was from the Kani got by the Plaintiff from the private persons as wages. So this two-fold suggestion would go to show that it is not much proved definitely that the Kani mixed was outside Kani. It is quite likely also that the Kani found on 13th May 1949 or 17th May 1949 was from the Government paddy itself. In fact, no direct circumstance is shown from the event seen and happened on 13th May 1949 to 17th May 1949 that any outside Kani could be mixed by the Plaintiff. It is an evidence that the milling work be done under the supervision of exhibit no.95 as well as also under his helpers like Hamals and whatchmen of the Government kept in the mill. At least these persons could have given some idea as to if the Kani was being mixed by the Plaintiff from outside Kani and there is no evidence to that effect. I must say that the evidence does not show that the Kani mixed was any outside Kani and it is quite likely that it might be Kani got from Government paddy. At this place I may discuss one aspect of the case about which the Plaintiff has made much to show how the Defendant is misled to prefer a very wrong charge against the Plaintiff.

10. The Plaintiff says that Bharat mill was already in blacklist; that the witness at exhibit no.104 was interested in the *Bharat mill; that as soon as some accidental mixture was found on 17th May 1949 the occasion was taken up by the witness like exhibit no.104 to raise a cloud of charges against the Plaintiff and then the whole proceedings started to cause calamity to the Plaintiff. Now it must be said that there is some force in

*o.p. 33.

113

this story of the Plaintiff. We have seen that before 13th May 1949 there is no kind of complaint about the Plaintiff's work. Then on 17th May 1949 a Panchanama is made and for that the witness exhibit no.104 as well as other 3 persons are present for it. Then exhibit no.95 takes his objection to the Plaintiff's rice on 13th May 1949 or 14th May 1949 and exhibit no.91 will show that on 14th May 1949 there is similar complaint about the mixture of rice from Siddapur Consumers Society Ration shop and exhibit no.87 will show that on 14th May 1949 a similar complaint was got from Heroor go-down keeper and Heroor is 24 miles from Siddapur. Besides it is said that there were anonimous applications against Plaintiff to say that his work was unsatisfactory and contrary to the conditions of his contract. Then the Plaintiff states that the Panch- Shanbhag on the Panchanama dated 17th May 1949 is the Secretary of Consumers Society and the Panch Deo is the Chairman of that Society; that Mr. Shanbhag was putting in the house of Bharat mill owner and that Bharat mill also runs a business in betel-nut and the Panch Antrolikar would work in that business; that as the village is very small, things happened in the village immediately are known to all and the anonimous applications also are got by these persons; that Shanbhag also gave a tender to give 75 per cent outturn and the witness, exhibit no.104 admits that this Shanbhag gave tender in 1949 and this witness Shanbhag had no mill then. The witness, exhibit no.94 denies much of his interested connections with any of the institutions as suggested by the Plaintiff. But apart from that it is clear from exhibit no.116, that on 12th July 1949, witness exhibit no.94 moved a resolution that paddy should be given to both the mills, i.e. Bharat mill should be removed from the black-list and given the paddy. There is

*o.p.34. *evidence in Government file as well as the statement of exhibit no.104, that recommendation was made to Government to give paddy to Bharat mill also and Government did not accept this suggestion. I need not discuss more facts on these matters and the certain reports of the Mamlatdar or the Supply Head Karkoon or the charges among or against one another and by their

superior, would only go to show that there might be some local atmosphere to create some trouble at all time. From all this one thing is clear that except this single event in dispute there is no complaint about Plaintiff's work before that and so from this position also it cannot be said that Plaintiff was mixing any outside Kani as such; that is, this position is not clearly shown and it is irrelevant to enquire any say for the purpose of the suit if the Plaintiff's story how all this trouble is engineered by interested persons, is true. So this much discussion will show that some improper mixture of Kani was found in the rice and the Plaintiff's explanation for that is not very convincing and so it can be said that it may not be true.

11. Then I will next proceed to discuss whether the Kani found creates breach of contract between Plaintiff and Defendant. In this respect it is first to be noted that charge of the Defendant and the defence against the Plaintiff is that he has mixed outside Kani and we have seen that there is no clear evidence to prove that any outside Kani is mixed. But on this ground it is also alleged for the Defendant that the mixture of Kani was beyond the terms of the agreement as will be seen from para no.11 of Defendant's written statement, exhibit no.12. But such a case is not made in the notice, exhibit no.58. Well one is inclined to remark here that both when the dispute arose first or while the dispute is under enquiry or while putting the pleadings in this case and raising points there has not been much definite and clear forms of assertions made on one side to prefer a charge or made on the other side to answer the charges or so something more than answer. Now first I will discuss what was the Kani got and it may be noted that this objected position can be first marked and studied only on 18th May 1949 or some time thereafter. But unfortunately it must be said that useful attempt is not made to find out exactly the amount of Kani, that is, its percentage or ratio to the rice. It would not be much out of place if I say here that the parties at least have not understood what is called

*o.p.35.

115 47

as Kani and what is to be called as rice in reference to Kani, as various words are used like: broken rice, Kani, Dod-nuchu, San-nuchu alias Rava. It can be at the most said that Defendants have got some definite words at some places to connote some of these varities. Then it is clear that on 13th May 1949 the Plaintiff has cleaned about 10 bags of milled rice and on that day about 350 were ready rice in the mill in addition to the broken rice got from 1st May 1949 till that date. Then the Plaintiff says that as a result of his cleansing 1 to 1½ Lbs. of broken rice was found in each bag of rice at its bottom and such bags were 45. Then he says that one bag of rice means 205 $\frac{5}{7}$ Lbs. weight of goods. Then he also says that on 31st May 1949 he gave 102 Lbs. of broken rice as got from 31 bags of rice after cleansing them as promised. So this means that the 45 bags found to have Kani on 13th May 1949 and cleared upto 31st May 1949 gave all the Kani according to him say, was at the rate of 1 to 1½ Lbs per bag or at the rate of 102 Lbs. for 31 bags—this latter statement of proportion would not justify his former statement of 1 to 1½ Lbs Kani could be got for one bag only—was nearly 122 to 127 Lbs. That means 2½ Lbs of Kani per bag or rice which would be 205 $\frac{5}{7}$ Lbs weight of goods. So the percentage was nearly 1 and 1½ per cent according to him. Now it will be seen from the account book exhibit no.55 kept by the Plaintiff to show the delivery of rice and broken rice; that he has given 102 Lbs. of broken rice on 31st May 1949. But at the same time page no.21 of exhibit no.55 shows that on 21st May 1949 to 25th May 1949 he has given Kani or broken rice of nearly 285 Lbs. and it cannot be known if it was from the objected 45 bags or all the other bags of 3 *groups found in the mill on 17th May 1949. So in this way the Plaintiff's story is not made much clear to show that the Kani was within the limit of percentage in it. Now the Defendant could have put some better evidence on this matter but unfortunately I must say that at no time any useful matter is made out to find exactly the percentage between Kani and rice. It will be seen that on 13th May 1949 a Panchanama is made and 2 bags were sought to be tested also. But the Panchas and it is

*o.p.36.

regretted to say that even the supply Head Karkoon, could not exactly know the proportion between the rice and the broken rice. At least on this date a definite attempt should have been made to know this proportion. Then it will be seen that in June of 1949 the Prant Officer has visited the Plaintiff's mill and even then no attempt is made to find out the proportion of the rice and broken rice. Then it can be said that on 28th November 1949 another test was also taken. But even then no definite results are got to show the exact proportions between rice and broken rice. In this way there is no definite evidence to show what was the proportion between rice and broken rice in the objected bags dated 13th May 1949. At exhibit no.110 is a detailed report of the District Supply Officer to the Collector made on 12th October 1949 and its continued portion is exhibit no.112 made on 4th November 1949. This report contains many other matters which are not at all relevant for the enquiry against the points made against the Plaintiff in this case and it is only to be said that even this report does not state any fact or position to show that the exact proportion between rice and broken rice was found out by the Defendant and perhaps the whole scope of the enquiry was to know if there was any mixture of outside Kani and not so much to know if the percentage of Kani was beyond the agreed percentage. It will be seen from exhibit no.112 that on 12th June 1949 the Prant Officer visited the Plaintiff's mill and found 3 bags of Kani and the Plaintiff admits that it was quantity of broken rice and swept up rice of Kani and both of them was about 3/4th of the bags and this broken rice was private goods that these were kept in 3 different bags; that *besides there were other 3 bags of broken rice of Government paddy to amount to 2½ full bags, that is 5 Bangali Maunds; that in the month of June he had milled 400 bags of paddy and the rice of that milled paddy was taken away and the remaining Kani from those bags was nearly 3 bags of those broken rice. It is suggested in exhibit no.112 that as Kani was found mixed at such place of bags as to raise all kind of bad suspicions and as against separate Kani was found by Prant Officer both of private paddy and Government paddy, the Plaintiff was in wrong that is against his

*o.p.37.

permissible limits. I do not think that any inference can be drawn from such facts that the proportion between rice and broken rice was really wrong in terms of the agreement. Then I would come to what should be the correct proportion between rice and broken rice in the outturn to be given by the Plaintiff and for this also I must say that the matters are as difficult to understand clear positions as they are with respect to the sources of the Kani the Plaintiff might have got. I also must confess that I am not able to understand all the evidence on this matter or the exact meaning of the agreement to show wrong side of these matters. For this we will have to turn to the agreement, exhibit no.52. It will be seen from para no.4 of exhibit no.57 that Plaintiff was to give a outturn of raw-rice—and Plaintiff was to work only to produce raw-rice—was 73 per cent, that is, 100 bags of paddy should give 73 bags of rice. Then the same para says that to take percentage of 73, 0-5 Kani should be included to that rice and the para no.3 of that agreement says that the proportion of grain of a size less than 1/2 of a whole rice grain in the rice produced shall not be more than 15 per cent of the outturn of the rice. But it is to be noted here that first para no.3 does not give the word 'Kani' nor the whole agreement defines what is called Kani. The para no.7 of the agreement says that if there is any excessive proportion of grains of the size less than 1/2 grains, it shall be extracted at the expense of the Plaintiff and this extracted stuff shall be included *in Kani for the purpose of percentage of outturn and this may perhaps give as some idea of what is to be the Kani and not a very clear and happy definition of what is meant by Kani. It therefore follows that para nos.3,4 and 7 are very difficult to understand them to give to mean what is Kani and what its percentage should be for it. I will later on come to the discussion of the oral evidence of both the sides to show the exact definition or meaning of Kani but first I will ascertain that position from the agreement itself. It is clear from the idea of the machine given by the Plaintiff that broken rice is got separately and rice is got separately. It is also an admitted practice between the

*o.p.38.

parties that delivery of rice is got separately and delivery of Kani is got separately, and then para no.4 of the agreement says that the Plaintiff is to give all the produce of the milled paddy—we need not consider the position of bran here which is to be given by the Plaintiff to the Defendant. So the correct position according to the agreement is that 73 per cent of rice is to be given as the total outturn and as the least outturn and this can include 0.5 Kani. Now if the proportion between rice grain and that of the size of less than 1/2 of rice grain is to be 15 per cent of the outturn of rice I do not know where the 0.5 Kani is to be accommodated to find out the exact balance of other kind of rice. Then it is to be seen also that if there is excessive proportion like above 15 per cent it is to be extracted and it is to be put in Kani. The only rational inference of all these positions is that among 73 per cent of outturn 15 per cent can be of the grain of the size less than 1/2 of the rice grain and only to find the total of 73 per cent outturn 0.5 Kani can be included. So it will appear that Plaintiff was to give say in 73 Lbs. of outturn rice the broken rice equal to $73 \times \frac{15}{100}$ i.e. equal to 10 to 11 Lbs. of broken rice. After ascertaining this position from the agreement I will turn to the idea of the parties about this very position. The Plaintiff states that as per contract in 100 bags he was to give $72\frac{1}{2}$ of good rice and 1/2 bags of broken rice mixed together to give effect to 0.5 per centage of mixture of Kani. Then at another place he says that the full grain or 3/4th of grain or ½ of *grain of rice is called rice and the piece less than 1/2 of rice grain is called particle or Kani and his agreement permitted to allow 1/2 per cent of Kani in bag of rice. Therefore according to him 13 Lbs. of Kani or particle in one bag of $205\frac{5}{7}$ Lbs. of goods was permissible. But in cross-examination he says that it is not a fact that in all 15.5 per centage of Kani was to be given as a separate lot and this is not his case; that he says that 15 per cent of Kani in the rice of 73 per cent outturned rice, i.e. 73 per centage, and this means that in $72\frac{1}{2}$; the grain more than ½ pan be $57\frac{1}{2}$ and the broken rice or grain

*o.p.39.

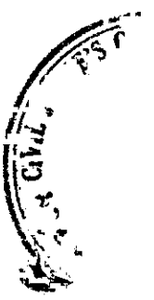
is 15. That way the Kani found in rice was of right percentage or of right proportion. Well I think the Plaintiff is not also much definite of exact positions at all times. Now we have found that as per agreement the Kani was to be 10 to 11 Lbs in the outturn of 73 Lbs. of rice and the above discussion shows that the Plaintiff suggested that his Kani came at the most 2 to 3 Lbs. per bag. That means within the permissible proportion of Kani to rice. But this very statement of the Plaintiff cannot be much believed as he says at one place that as a result of replaced sieve the outturn was, in 73 bags of rice 72 bags were good rice and 1 bag was broken rice and so this would work out a percentage nearly 1½. But we have no exact, definite evidence for this result at least from Plaintiff's side. Then we shall turn to the statement of exhibit no.104 who has to say something about this percentage idea. In para no.3 he states that Kani means a small particle like Rava. It is about 1/8th of the rice grain and is less than 1/4th of the grain and if it is less than 1/8th of the rice grain it is taken to be dust; that the Kani would be separately collected and Government would distribute it for sale as course grain; that the permissible 15 per centage of broken rice is distinct and different from what is called Kani as it is bigger than the Kani and this 15 per cent permissible grain must be of the size less than 1/2 and more than 1/4th. *So this would mean that the Kani according to Defendant is a broken rice grain of the size less than 1/4th of full rice grain and this is to be 0-5 permissible Kani and the permissible 15 per cent broken rice is to be of the size less than 1/2 of the full rice grain and more than 1/4th of the full rice grain. But we have no evidence, that is there is no evidence to show whether the objected broken rice found on 13th May 1949 was of what size and so we do not know if the Plaintiff had committed that way the breach of any agreement. It is important to note that the agreement does not describe the various kinds of broken rice which is less than 1/2 the size of a rice grain and so it will not be quite correct to accept the statement of exhibit no.104 to indicate the 15 per cent permissible limit. It is in --

*o.p.40.

evidence that small broken rice is also sold as Nuchu or Rava and people purchase it. But that does not help us much to clear this position. Considering these positions it is clear that there is no clear evidence to show that Plaintiff has any way broken the agreement by committing the breaches of Clause no.3 read with clauses 4 and 7. It is important to note that there is no dispute that Plaintiff has fulfilled the total outturn of 73 per cent and it is also important to note that Plaintiff has offered to clean this objected rice outturn and he did it and that would be somewhat compliance of clause no.7 of the agreement. I may state here that except bare suggestion that Plaintiff is guilty of breach of agreement from point of giving exact per centage of rice and broken rice there is no clear evidence for that purpose and all the suggestions on the side of the Defendant for this purpose are sought to be made from 2 or 3 circumstances like—that the Kani was found at particular place which may not ordinarily happen according to the usual working of the mill or even if the millworks with some defective part in the machine, secondly the Plaintiff was in possession of both private-paddy-Kani and Government-paddy-Kani and there was some difference of shades and colours of these Kanis and Plaintiff's family, that is a separated member of his family had a rice mill at Sagar. Now except the fact that Kani was found *out at a very irregular places, which may not be the result of natural machine work and so which goes to suggest that Plaintiff was little negligent in seeing to the working of the machine or even Plaintiff might be deliberately intending a little additional mixture of broken rice by wrong method of mixing the separately got Kani with the separately got rice in the mill, there is nothing clear to show that the Plaintiff is guilty of the breach of the agreement, exhibit no.57 with respect to its clauses, 3,4 and 7. And then the question arises whether the Plaintiff was wrongly or maliciously charged. In this respect I must say that two legal aspects must be considered. The learned pleader for the Defendant maintained that according to para no.1 read with para no.14 of exhibit no.57 the Defendant that is its

*o.p.41.

its Officer is a judicial role in such matters; that in deciding as to whether an act to be done by a competent authority is a ministerial act or judicial or quasi judicial act the benefit is to go to the subject and in case of power exercised judicially or quasi judicially, the legislature would not finally confer all power on the authority and the Courts would be within their power to investigate if the power is exercised judicially or not. So I think that simply because the agreement gave final right to the Collector to decide what is the meaning of the agreement or what should be the position of a dispute, it cannot be said that he was the final authority and his decision cannot be challenged, so far as the decision of that matter goes. I therefore think that the Court can still enquire if the decision of the Defendant about the breach of agreement by Plaintiff , if any, was right or wrong and from this point of view I must say that there is no evidence to show that the Kani mixed was outside Kani or it was exceeding the 15 per cent limit and the Defendant was not right in alleging the breach of agreement, exhibit no.57. But at the same time I must say that there is neither malice nor malafide intention in alleging that Plaintiff was guilty of the breach of the agreement. The Plaintiff himself did admit the wrong position of 13th May 1949 though it is not so proved to be so much wrong according to the terms of the agreement. *It cannot be said from the positions that no complaint was found in the work of the Plaintiff before 12th May 1949 or after that the Plaintiff has been all along right as it is just possible that his wrongs committed in those 2 periods might not have been looked into or might not have been easily found. Ultimately the head of the District as well as his immediate sub-ordinate must fall on the help in matters to be found by the officers on the spot and in the matters like Food Control and Food Distribution, which are to be carried from day to day and in full force without giving rise to any complaint from public, all the local officers may not find time to look into all matters. Hence I cannot say that there



*o.p.43.

123 165

was any malafides of the Defendant to prefer a charge against the Plaintiff. In the light of these positions I find as above on issue no.8.

12. Then it will also follow that there was every responsibility on the Head of the District to see that complaints do not arise and if with that object any steps are taken however serious they may be it cannot be supposed that they are taken with any malice or deliberate intention. The Plaintiff has got nothing to allege ill-will towards him as such against the Panchas or any of the Officers of the Defendant and he only wants to say that only to help the other mill this trouble has arisen. But that fact also will not prove any malice or deliberate intention of the Defendant aginst Plaintiff. In fact, the Plaintiff's admission at exhibit no.57 dated 14th May 1949 goes to show that he has to admit according to his own idea wrongful position he has committed and he has never any idea to explain that wrongful position as a mistake in the machine till he made his statement before the Prant Officer on 11th November 1949, like exhibit no.83. Hence I think that there can be no malice or want of bona fides or existence of deliberate intention to prefer charge against the Plaintiff. At the most it may mean that the charge preferred of the form of mixing outside Kani or giving out excessive per centage of Kani is not proved. But at least the charge clear is that Plaintiff has positively mixed separately got Kani *with the separately got rice and this position will fully support the bona fides of Defendant's officer. I therefore as above find on issue no.9.

*o.p.44.

13. The result of this discussion is that even as per the agreement and in the light of the finding on issues nos.4 and 5, Plaintiff does not prove any breach of the agreement. I therefore find accordingly on issue no.6.

14. So the Plaintiff will not be entitled to claim any damages simply because the Defendant does not prove the breach of the clauses like 3,4 and 7. For these reasons I find that so far as the matters of agreement or contract goes, the

Plaintiff is not entitled to any damages. I find accordingly on issues nos.2,6 and 7. By the by I may refer that issue no.2 is practically a part of issue no.7.

15. Then I will turn to the question of damages for defamation. I do not think that Plaintiff can with any sense make out a case of defamation. It will be seen from the discussion of the Tort of defamation, from the said Shri Ramswami Ayyer's Book, page 274, that defamation must consist of two parts originally- 1) using defamatory words and expressions and 2) the publication thereof. Taking for granted that both these facts are present it is clear that there is good reply given by the Defendant in the position of what is called privilige. As can be seen from page 274 of the said book- that judicial authorities and it must be said that the Collector was acting judicially in these matters, had a privilege to make such statement or charges in discharge of his public duties and in respect of the public and this privilege is also an absolute privilege. Then the ruling in 48 Bombay Law Reporter page 882 (Janardhan Vs. Ramchandra) will show that mere falsity of facts and negligence to ascertain correct facts does not amount to any malice; that if the action is covered by the position of a privilege then the Plaintiff will have to prove malice. The ruling in 43 Bombay Law Reporter page 632 (Mitha Vs. Narsawanji) shows that mere imputation of offence more in the nature of a * suspicion cannot be actionable per se and here we have seen that there is much ground for the Defendant to prefer charges as a matter of suspicion. Then the next ruling like 37 Madras page 55 (Ras Vs. Secretary of State for India) will show that the charges preferred by the Defendant's officer were in execution of his duties and that execution of the duty was absolutely privileged and there is no malice proved and so there could be no defamation committed by the Defendant. Then it can be also seen that the final order has been passed by the District Magistrate on refering the matters to the Government and it is not the act of the officer of the Government also, and Government was acting under authority given to it. So from these points it will be clear that there can be no defamation by

*op. 45.

the Defendant. I think I need not discuss other matters or any more legal positions in this respect. I therefore find in favour of the Defendant on issue no.11. Then it is clear that Plaintiff is not entitled to damages for loss of reputation also and I need not discuss the matters if the Plaintiff is a man of status and what will be the damages due to him. I therefore find accordingly on issue no.10. And for issue no.10, it can be also said that in fact the Plaintiff has not suffered that damage as Plaintiff had no absolute right to claim business from the Defendant.

16. Then I will turn to the question of forfeiture of deposit. It is to be noted from exhibit no.65, that the action is taken that is the deposit is cancelled finally on account of the mal-practice of the Plaintiff though the notice given to the Plaintiff as per exhibit no.58 included 3 grounds like mal-practice, not giving accounts of the paddy milled for the private persons and also for the breach of the Bombay Food Grains Control Order 1947. The two other grounds I will consider separately. Now in view of the findings, it will appear that no definite breach of the agreement by the Plaintiff is proved and so it may appear that the Defendant was not right in cancelling the deposit. It is also to be noted that the cancellation of the deposit has nothing to do with the breach
S.p.46. *of Food Grains Control Order of 1947 or the Bombay Rice Mill Licensing Order of 1943. It may appear for some time that Plaintiff will be entitled to claim the deposit at least as there is no breach of the agreement. But on a closer consideration, I think the Plaintiff's right to that also stands on a very uncertain ground. We have already seen how the final authority given to the Defendant under clause no.2(1) read with 14, is not the final authority under law, though it may be so under agreement. But that authority is not final so far as the decision of dispute goes. But I think under the agreement it does give a final authority to the Government as well as to its officer to take action as it thinks fit, though the position stated to be wrong to give rise to that action is not proved. The ruling in 54 Bombay Law Reporter page 273 --

(Abdul Gani Vs. Trustee of Bombay) will show that the deposit like the present are on due performance of the contract and it is not governed by Section 74 of the Indian Contract Act. The facts of that case were different from these facts. So this ruling does not apply fully to the case but it only shows the position and nature of the deposit. Now it will be seen that by the agreement, exhibit no.57 the Plaintiff conceded or has sacrificed some of his rights and recognised the supreme right of the other side, that is the Defendant and they can be said to be the two kinds of rights and this absolute conceding of right by the Plaintiff was that the Plaintiff had agreed to stand by the final action of the Collector in the matter. That is the cancellation of the deposit or any order passed by the Collector, as the result of his decision of the enquiry. I have already said that so far as the scope of enquiry and the scope of the authority to finally decide the dispute is not so much final as expressed in terms of agreement. But that does not mean that the Collector had no final authority to take final steps. It is at once clear that in the matters of agreement either party has free right to concede his rights or sacrifice his right and so the Plaintiff had agreed as per agreement for the forfeiture of deposit whenever the Collector decides to forfeit it. It cannot be said that Plaintiff had agreed to the result *of the forfeiture of deposit only in the cases where the Defendant was within the terms of agreement, exhibit no.57 as the wording is in clause no.2(1) of exhibit no.57 that the Collector of Kanara may at his discretion forfeit the whole or part of the amount of deposit and the decision of the Collector will be final. No doubt the said clause also says that the forfeiture was to be for contravention of any of the conditions hereafter to contain in the agreement. But if certain irregularity was found on the part of the Plaintiff by the Collector of Kanara I think he had full discretion to take the step of forfeiting the deposit though he may not have the full discretion to judicially decide the dispute, to the form of decision he comes to. Not only this but the Plaintiff has given up his right to go to Court also and

*o.p.47.

127 Ex 1

that would mean that Plaintiff gave absolute discretion to the Collector to forfeit the deposit though it cannot be said that Plaintiff really lost his right to come to Court. I therefore think that so far as the matters of forfeiture of deposit goes the Plaintiff has not got any good claim. In the light of these positions I find in favour of the Defendant on issue no.12 and against the Plaintiff on issue no.13.

17. Now the only question remains for discussing is about the effect of the Food Grains Control Order of 1947 and the Rice Mill Licensing order of 1943. But in this respect it may be noted that the effect of these orders need not be considered in this case. The only final order passed by the Defendant is for stopping the supply of Government paddy for milling to the Plaintiff and his milling license is not at all cancelled. So these positions do not arise much for enquiry and decision. However I will shortly discuss those positions. Then as regards the Mills Licensing order 1943 it will be seen that form no.2 is the form of the license and according to the condition no.2 of the license form, the licensee is to submit account of the paddy for rice every fortnight. Then it is said that Plaintiff has not kept such account. Now the Plaintiff produces the account of the private paddy milled at exhibit no.74 but they are upto 1949 March only and * the Plaintiff says he did not do any private paddy milling thereafter. But from the statement of Plaintiff before the Prant Officer it will be seen, then he stated to have kept no accounts at all of such paddy and so it is clear that there is no clear proof by the Plaintiff that he has submitted all account of the private paddy-milling-work. In this way it is clear that Plaintiff is guilty of the breach of the license for milling paddy. Then as regards 1947 Food Grains Order, it is said that Plaintiff was not justified in accepting rice or Kani as wages for private paddy milling work. But from Notification dated 6th October 1948 published in Bombay Gazette dated the same, that the agriculturists were entitled to give rice to a certain extent and to a certain persons or this transaction

*o.p.48.

may amount to sale and disposal of rice which is a controlled commodity. Now it may be taken that Plaintiff as a mill-worker would not be one of the persons to whom such an agriculturist can sell or dispose of rice within the meaning of proviso of Section 3(b). If at all anybody is wrong in giving paddy the agriculturists are in the wrong and not the Plaintiff and so I do not think that Plaintiff has committed any breach of that notification. Then the Food Grains Control Order, 1947 on which the Defendant also relies in this respect would not apply to the Plaintiff as it applies to the dealer in whole-sale quantities and not to the retail disposals like giving wages in rice kind for private paddy milling work and in small measures. Hence that way also no charge can be made against the Plaintiff. Considering these positions I hold that if it is the milling license that is cancelled, it may be correct and there is no breach of -- that milling license Order of 1943 or Food Grains Control Order of 1947 so far as the scope of the matters in this suit are concerned. The result is that Plaintiff's claim must fail. It is important to note that Plaintiff has misconceived his rights both for the year of contract i.e. 1948-49 and for the non-contract years like 1949-50 and 1950-51 and he had also surrendered his rights to the status of the deposit and its fate. Then the Plaintiff's case of defamation also was absolutely useless. In this way the Plaintiff's case * has inherent weakness to show the failure of his claim and that way the Defendant may deserve his costs. However it is found that it would not have been a very bad case to condone the Plaintiff's irregularity and allow him to do the Government paddy milling work so far as the whole of this dispute and the enquiry was concerned, though the Plaintiff could have stood penalty of cancellation of milling license on account of the not submitting the account of the paddy milling work. But his milling license is not cancelled. Considering these positions I think that Defendant may not be entitled to full costs. At the same time it may be noted that Defendant is such a institution which should not be bothered with litigations in

*o.p.49.

129 + 1

Court for any small irregularity and that way I think the Defendant deserves some costs at least. In the light of this position I think it would be proper to allow at least 3/4th of the costs of the suit to the Defendant. For these reasons I find on issues nos.14 and 15 as above and pass the following order.

O r d e r.

The Plaintiff's suit is dismissed. The Plaintiff to pay 3/4th costs of the suit to Defendant and bear his own.

15th April, 1953. Sd.A.B.Vagyani,

Civil Judge, Senior Division.
15/4/1953.

Copied by

Compared by

Original C. R. Gaonkar.

Copy

T R U E C O P Y

9-6-53

Clerk of the Court.

Application received on- Fifteenth April 1953.

(Deposit amount received on-1-6-1953)

Copy ready on- - - - Nineth June 1953.

Copy delivered on- - - Twenty-second June 1953.

C.O.C.

G.C.P.—(J) J. 2—500—4-36—X2(Supr.)

[Spl.—Govt. Pl. H.C. Bom. 3.

No. 8062

Bombay, 19th October 1953.

Subject: First Appeal No.463 of 1953 in Spl.C.S.No.7/51.
K.Laxmanrao, Proprietor, Shri Krishna Rice Mills, Siddapur. -Vs-.The State of Bombay....

To

The Collector of Karwar, At : K A R W A R.
Kanara

Sir,

I have the honour to forward, herewith, a copy of Memorandum of FIRST Appeal in the case noted above and to request the favour of your applying for the sanction of Government for the defence of the same and giving me such detailed instructions as you may deem necessary.

2. The High Court's notice served on me this day in the above case accompanies.

3. If any objection, under Rule 22, Order 41, Civil Procedure Code, against the decree of the lower Court is to be urged, the necessary sanction of Government for its filing may be obtained early, as it must be filed in the High Court within one month from the date of service of notice.

4. The District Government Pleader, who may have conducted the above in the lower Court, may be asked to inform me the numbers of important exhibits which will have to be relied upon in support of the case on behalf of Government at the time of its hearing here.

5. A copy of the *Rojnama* as required by Government Resolution, Legal Department, No. 298, dated the 4th May 1911, and a certified copy of the notice given by plaintiff under section 80, Civil Procedure Code, may also be sent to me.

6. I shall also thank you to send me 4 copies of the plan showing the exact position of the land acquired in relation to its surrounding situation and the several instances of sale relied on in the lower Court.

I have the honour to be,

Sir,

Your most obedient servant,

faithfully,

Sd/- V.S.Desai.

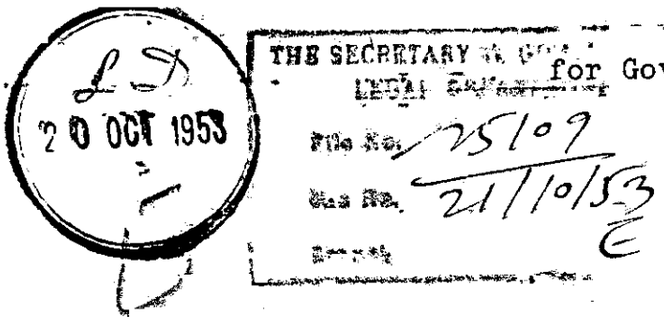
for Government Pleader, High Court

1/52

No. 8063
Bombay, 19-10-1953.

Copy with a copy of Memorandum of F.A.No.463 of 1953 with a copy of notice forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for information and necessary action.

for Government Pleader, High Court.



IN THE HIGH COURT OF JUDICATURE AT BOMBAY. 137

FIRST APPEAL N O.463 OF 1953.

K.Lamamrao, Mill P roprietor, Shri, Krishna Rice Mills Siddapur... ... ... Appellant. (Orig.Plaintiff.)

Versus.

The State of Bombay. ... ... Respondent. (Orig. Defendant.)

Claim Rs.12,600/- for a-ll purposes.

The Appellant abovenamed begs to a ppeal against the decree of the Civil Judge, Senior Division, Ka-nara, in Special Civil Suit No.7 of 1951, dated the 15th A-pril 1953, on the following among other grounds:-

(1). The decision of the Lower Court, in so far as it goes against the A ppellant is contrary to law and against the weight of evidence in the case.

(2). The Lower Court erred in dismissing the Plaintiff's suit in its entirety.

(3).IT was wrongly held that the plaintiff had not p roved that his contract with the defendant was in terms of tender notice dated 6th October 1948, and nothing beyond the terms of the said notice.

(4). It was wrongly held that the contract of the plaintiff with the defendant was in terms of Exhibit No.57, dated 25th August 1949.

(5). It was wrongly held that the plaint is not very precise or definite.

(6). It was wrongly held that the p laintiff had changed his case to a different one from what he had p leaded in the plaint.

(7). The Lower Court has misunderstood and misconstrued the plaint.

(8).T-he Lower Court has failed to see that even before the alleged agreement of 25th A-ugust 1949 (Exh.57) had come into existence, the p-l-aintiff had been given paddy for milling and he had milled the same, obviously in terms of the tender notice.

(9). T-he Lower Court ought to have held that plaintiff was justifi--ed in treating Exhibit 57 as non-existent and of no effect in as much as the work was already begun independently of that w and that even the defendant had treated it as a mistake in resp-ect of the period mentioned therein.

(10).It was an error to hold that exhibit 57 was binding on the plaintiff and was the basis of the transactions between the plainti-

1357

plaintiff and the defendant when the plaintiff had repudiated the same wholly and the defendant had also done the same partly.

(11). It was an error to hold that the rest of the terms of the Exhibit 57 except the term concerning the period were binding and gave the true contract arrived at between the parties.

(12). It ought to have been held that these terms of the tender notice were the only terms binding the parties and which determined the contract between the parties, without any time limit.

(13). It should have been held that the correspondence between the plaintiff and the defendant which followed on the rejection of the plaintiff's tender as being late by one day, determine the terms of the contract in terms of the tender notice and that the agreement was to continue so long as it was not validly terminated.

(14). It should have been held that both the plaintiff and the defendant having not agreed on the question of the period of the agreement as set forth in Exhibit 57, the same was of no effect and binding force between the parties; being void as to a part; it ought to have been treated as void as to the whole of it.

(15). The Lower Court erred in proceeding on the basis that the contract period for any year was for one year from 16th November of one year to 15th November of the next year and that it could not be varied to a larger period or a different period, when especially the documents on record falsified such an assumption.

(16). Having held that there were facts in the present case to show that the plaintiff's contract or work for 1948-49 cannot be like the period proposed in the tender notices, the Lower Court erred in not holding that the period of the contract was the one set out in exhibit No.57 when especially both the parties agreed that there was a mistake as to the period as set forth therein.

(17). In as much as the plaintiff was given paddy for milling in pursuance of Exhibit 54 and the defendant has not shown that was the relevent decision arrieved at by the Government in that connection, an adverse inference should have been drawn against the defendant.

(18). Having held that it was not known on what terms and conditions the plaintiff was given paddy for milling it was wrong to pin down the plaintiff to the terms of Exhibit 57 as the basis of the contract.

137

(19). The Lower Court was wrong in considering the case on the basis of Exh.57 when neither party accepted it as the true contract.

(20). Having held that the plaintiff's contract started under different circumstances and as a separate transaction and the defendant having repudiated the period in Exhibit 57, it ought to have been held that the contract between the parties to the suit was in terms of the tender notice as modified by the correspondence between the parties for a period until it was validly terminated. Further as the Government had not placed all the material in this connection before the Court, as held by the Court, an adverse inference ought to have been drawn against the defendant.

(21). It should have been held that the defendant was bound to supply paddy to the plaintiff for milling under the contract for the year 1948-49 and that the plaintiff had proved the same.

(22). It ought to have been held that the defendant was wrong in not supplying paddy to the plaintiff for milling for the year 1949-50 and 1950-51; though there might not have been a contractual liability to supply paddy, there was a tortuous obligation to do so.

(23). It should have been ~~that~~ held that in as much as the defendant had put restriction on the plaintiff's natural right to earn his living by means of his mill, the defendant was bound to give plaintiff sufficient work by giving him paddy for milling.

(24). It was wrongly held that there was no ~~k~~ obligation on the part of the defendant to give plaintiff any or so much paddy for milling even for the year 1948-49.

(25). It was wrongly held that there was no contract at all for 1949-50 and 1950-51 and therefore there was no ~~k~~ obligation at all to give plaintiff any work.

(26). It ought to have been held that the defendant had wrongfully refused to give paddy to the plaintiff for milling in the year 1949-50 and 1950-51.

(27). The Lower Court has failed to see that though the Collector had not absolutely stopped plaintiff from doing private milling work, the plaintiff's reputation had sufferred as a result of the Collector [illegible] black-listing plaintiff's mill and that this wrongful [illegible] part of the Collector has resulted in loss to the

139

(28.) The Lower Court ought to have held that the Plaintiff's tenders for the years 1949-50 and 1950-51 were wrongfully rejected and that the defendant had thereby wrongfully refused to give plaintiff paddy for milling during those years.

(29). In as much as the refusal on the part of the defendant to give paddy to the plaintiff for milling was based on the view taken by the defendant fo the incident which took place on the 13th May 1949 in connection with the alleged mixing of outside "Kani" and in as much as the Lower Court had come to the conclusion that the said charge was not proved, it is clear that the refusal on the part of the defendant to supply paddy for the year 1949-50 and 1950-51 was illegal and wrongful, and in as much as the plaintiff had been deprived of the business for the years 1949-50 and 1950-51 by such wrongful refusal, the defendant ought to have been held liable to make good the plaintiff's loss.

(30). The Lower Court having held that there was no evidence to show that the plaintiff had mixed outside "Kani" in the rice, and that the mixing of kani was not in breach of the contract, erred in not holding further that the charges levelled against the plaintiff were wrongful and that the penalities imposed in that connection were also illegally imposed and that the plaintiff was as a result put to loss wrongfully and that the defendant was therefore bound to make good that loss to the plaintiff.

(31). Having held that all three gounds made against the plaintiff in the notice dated 15th March 1950 were not at all tenable, it ought to have been held that the Collector's action in imposing the penalties on the plaintiff was illegal, high handed and ultra vires and that the plaintiff was as a result put to loss which the defendant was bound to make good.

(32). It was wrongly held that the plaintiff's explanation as to how Kani got mixed up with the rice could not be believed.

(33). The Lower Court has failed to see that the milling was done under the direct supervision of the godown keeper who should have stopped the milling immediately if he found any mistake in milling and that the mixing of the Kani could be as much atributable to the neglect on the part of the godown keeper as of the plaintiff.

(34). The Lower Court has failed to see that the plaintiff could have no selfish or guilty notice in mixing Kani especially when it

141 HC

is considered that it is not even alleged, much less proved, that plaintiff had defrauded the defendant of the equal quantity of whe rice by mixing Kani to make up the quantity required.

(35).. The Lower Court erred in holding that the explanation on basis of mechanical defect was not satisfactory, without itself kn -ing anything of the working of the mechanism and without the aid expert's evidence.

(36). Having held that there was some p force in the plaintiff case that the plaintiff's mill was attempted to be put in the blac -list at the instance of the owner of the B harat Mill by Exhibit 104 who was interested in the said mill, the Court ought to have further held that all the action taken against the plaintiff and h mill and black-listing of the plaintiff's mill was a malacious and malafide act on the part of the defendant's servants.

(37). It ought to have been held that the defendant's servants entered into a conspiracy with the owners of the B-harat Mills, to deprive the plaintiff of his business and bring down his reputatio

(38). The Lower Court is wrong in holding that the question o engineering of the situation by other interested persions is irrel -vant to the present inquiry in as much as that aspect has a clear bearing on the question as to whether the action taken by the serv -s of the defendant was bona fide.

(39). Having held that the charges levelled against the plaint were not proved, and that there was ground for believing that the trouble was started as a result of p-artially of exhibit 104 for t B-harat mill, the Lower Court erred in holding that there was neit malice nor malafide intention on the part of the Govt. on the gene and sweaping ground that it is not possible for the local arricers to look into all the matters.

(40). It was wrongly held that the plaintiff had not proved an breach of agreement on the part of the defendant.

(41). It was wrongly held that the plaintiff was not entitled any damages in resp-ect or loss or business.

(42). It was an error to hold that the plaintiff had not prove defamation and even if there was defamation the defendant's case w [redacted] by the privilege which was absolute.

It was wrongly held that there was no malice in the acti

143

(44). It should have been held that the action of black-listing the plaintiff was actuated by ulterior motices and not done in bona-fide execution of its duties and that it was done at the instance of and for the benefit of another person and that therefore it was done out of malice and was malafide and that it was the result of a conspiracy to deprive the plaintiff of his business and reputation.

(45). It was an error to hold that the plaintiff was not entitled to damages for loss of reputation.

(46) The Lower Court was wrong in not giving its finding on the question of damages for loss of reputation.

(47). It was wrongly held that the plaintiff was not entitled to get back the deposit of Rs.500/- which the Collector had wrongfully forfeited.

(48). Having held that the forfeiture of the deposit was not justified under the circumstances of the case, the Lower Court erred in not ordering the refund of the same.

(49). It was an error to hold that in as much as the plaintiff had agreed that the Collector was entitled to forfeit the whole or any part of the deposit in his descretion for contravention of any of the conditions of the agreement, that the plaintiff could not challenge in a Court of law the wrongful forfeiture of the same by the Collector even supposing that under the agreement the Collector's descrition was final, such a restriction being void under section 28 of the Contract Act.

(50). Having held that the plaintiff had not lost his right to come into the Court and challenge the Collector's action of forfeiting the deposit, it was an error to hold that even when he had succeeded in showing that the Collector's action was wrongful, he was not entitled to the refund of the amount forfeited.

(51). The Lower Court was totally wrong in not directing the defendant to refund the amount of deposit when it had found that not even one of the three charges levelled against the plaintiff could be brought home to him and that there was no breach of the contract nor any breach of the mills Licencing Order not of the Foods Grains Control order and also that the irregularities of the plaintiff were not such as could not be condoned.

(52). It should have been held that the defendant was not justified in making charges levelled against the plaintiff as

141 +3

is considered that it is not even alleged, much less proved, that the plaintiff had defrauded the defendant of the equal quantity of whole rice by mixing Kani to make up the quantity required.

(35).. The Lower Court erred in holding that the explanation on the basis of mechanical defect was not satisfactory, without itself knowing anything of the working of the mechanism and without the aid of expert's evidence.

(36). * Having held that there was some force in the plaintiff's case that the plaintiff's mill was attempted to be put in the black-list at the instance of the owner of the B harat Mill by Exhibit No. 104 who was interested in the said mill, the Court ought to have further held that all the action taken against the plaintiff and his mill and black-listing of the plaintiff's mill was a malacious and malafide act on the part of the defendant's servants.

(37). It ought to have been held that the defendant's servants had entered into a conspiracy with the owners of the B-harat Mills, to deprive the plaintiff of his business and bring down his reputation.

(38). The Lower Court is wrong in holding that the question of engineering of the situation by other interested persions is irrelevant to the present inquiry in as much as that aspect has a clear bearing on the question as to whether the action taken by the servants of the defendant was bona fide.

(39). Having held that the charges levelled against the plaintiff were not proved, and that there was ground for believing that the trouble was started as a result of partially of exhibit 104 for the B-harat mill, the Lower Court erred in holding that there was niether malice nor malafide intention on the part of the Govt. on the general and sweaping ground that it is not possible for the local afficers to look into all the matters.

(40). It was wrongly held that the plaintiff had not proved any bearch of agreement on the part of the defendant.

(41). It was wrongly held that the plaintiff was not entitled to any damages in respect of loss of business.

(42). It was an error to hold that the plaintiff has not proved defamation and even if there was defamation the defendant's case was [redacted] by the privilege which was absolute.

[redacted] It was wrongly held that there was no malice in the action

145

just and proper and natural sequence in view of the relations and dealings between the parties.

(53). It should have been held that the plaintiff was entitled to Rs.4000/- as damages for loss of business as a result of the breakh of contract. Rs.3000/- for loss of reputation and Rs.500/- by way of refu of deposit wrongly forfeited

(54). The Lower Court has wrongly shut out the plaintiff's evidence.

(55). The Lower a pplicable to the case has not been prpp-erly app-reciated and correctly applied to the facts of the case.

(56). The p-leadings and the documents have b een misconstrued, as a new case has been made out for the defendant.

(57). The p appreciation of evidence is faulty and one-sided.

(58). Proper and necessary issues have not been raised and correct and legal inferences have not been drawn from proved facts, and the inseferences drawn are wrong.

(59). The plaintiff's shit should have been decreed fully with costs.

B O M B A Y.
3-8-1953.

Sd/- N. M. Shanbhag.
Advocate for Appellant.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, BOMBAY.

(45) (45)

APPEAL NO.463 OF FROM ORIGINAL DECREE.

K.LAXMANRAO, MILLS PROPRIETOR, SHRI KRISHNA RICE MILLS, SIDDAPUR. ... Appellant.

Versus.

THE STATE OF BOMBAY, ... Respondent.

Claim Rs.12,500/- for all purposes.

No.2748 of 1953.

From

The Dy. Registrar,
High Court, Appellate Side, Bombay;

To

The Secretary,*
Legal Department, State of Bombay, secretariat,Bombay.

Bombay, 8th October 1953.

Sir,

The Appellant abovenamed having presented an appeal from the decision of the S.D.Civil Judge of Karwar in Spl. Suit No. 7 of 1 1951, and the same having been registered in this Court, and this Court having on 17-9-1953, order notice to issue, I have the hono to inform you that the hearing of the said appeal will take ~~day~~ place on the 14th December 1953, or an ahy subsequent day which to this Court may seem convenient; and that if no a-ppearanee is made on your behalf either in person or by a pleader of this Court or agent duly authorised and instructed, it will be heard and determined in your absence.

Yours faithfully,

*To be served on the Govt. Pleader, High Court,A.S.Bombay.

Sd/-

for Dy. Registrar.

149/53

Suits:
Kanara.
For recovery of Rs.12,500 and costs of suit.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1543/E
Sachivalaya, Bombay, 19th July 1955.

Read Government Resolution, Legal Department No. 8671, dated the 23rd May 1952.

Letter from the District Government Pleader, Kanara No.258 dated the 15th April 1953, stating that the suit noted in the margin was decided by the Civil Judge (Senior Division), Karwar on the 15th April 1953, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Karwar. Civil Suit No. 7 of 1951. K. Laxmanrao, proprietor, Shri Krishna Rice Mill, Siddapur. ...Plaintiff; versus The State of Bombay. ...Defendant.	:

" The plaintiff's suit is dismissed. The plaintiff to pay 3/4th costs of the suit to Defendant and bear his own."

Letter from the District Government Pleader, Kanara No.395, dated the 23rd June 1953 forwarding certified copies of the judgment and decree.

Endorsement from the Government Pleader, High Court, Bombay No.8062 dated 19th October 1953 stating that the plaintiff in the suit noted in the margin has filed an appeal No.463 of 1953 and requesting sanction to its defence.

RESOLUTION : (1) The result of the suit is recorded.

(2) Sanction is accorded to the defence of the appeal No. 463 of 1953 in the High Court, Bombay on the lines of the brief accompanying Government Resolution, Legal Department, No. 8671 dated the 23rd May 1952 and the favourable grounds contained in the judgment of the Civil Judge (Senior Division), Karwar dated the 15th April 1953.

By order and in the name of the Governor of Bombay,

Original
(D.P. Shikhare),
Deputy Secretary to Government.

To The Agriculture and Forests Department,
The Collector of Kanara at Karwar,
The Government Pleader, High Court, Bombay,
The District Government Pleader, Kanara.

cks/6.7. Submitted for signature
DS (Civil)